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S. HRG. 99-692

THE DRUG MONEY SEIZURE ACT AND THE BANK SECRECY ACT AMENDMENTS

ORIGINAL

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 571

TO AMEND SUBCHAPTER II OF CHAPTER 53 OF TITLE 31, UNITED STATES CODE, RELATING TO CURRENCY REPORTS

S. 2306

ENTITLED THE "BANK SECRECY ACT AMENDMENTS OF 1986"

MAY 1, 1986

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

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THE DRUG MONEY SEIZURE ACT AND THE BANK SECRECY ACT AMENDMENTS

THURSDAY, MAY 1, 1986

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10:30 a.m., in room SD-538, Dirksen Senate Office Building, Senator Alfonse M. D'Amato presiding.

Present: Senators D'Amato, Gorton, Mattingly, Hecht, Cranston, Dixon, and Sasser.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. The Banking Committee will come to order.

First, I'd like to thank your distinguished chairman, Senator Garn, for authorizing this full Banking Committee hearing on two bills I have introduced to combat money laundering, S. 571, the Drug Money Seizure Act; and S. 2306, the Bank Secrecy Act Amendments of 1986. Judge Irving Kaufman, the Chairman of the President's Commission on Organized Crime, said it best when he described money laundering as "the lifeblood of organized crime." I have introduced S. 571 and S. 2306 to begin a new stage in our fight to cut off this lifeblood and to combat the abuse of our financial system by career criminals who launder the proceeds of their illegal activities through financial institutions in this country and abroad.

The first stage has consisted of enforcement efforts such as Operation Greenback and the *Bank of Boston* case. This phase has led to increased though not yet full compliance with the Bank Secrecy Act and the increased commitment of Federal bank regulatory agencies to monitor this area.

S. 571, a bill that I originally introduced in 1984, has three key goals. One, full compliance with the Bank Secrecy Act by providing the Treasury Department with an administrative summons power. Two, for the first time, the imposition of penalties upon individuals who willfully violate reporting rules involving foreign bank accounts; and three, tougher penalties against financial institutions that act in collusion with money launderers.

The bill also contains an administrative summons authority to enable the Treasury Department to obtain fuller compliance with the Bank Secrecy Act by investigating financial institutions such as casinos and domestic currency brokers who are subject to the Bank Secrecy Act but who are not now regularly examined.

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Under current law, the Treasury Department can only obtain the information it needs to ensure compliance or to enforce the act by either persuading the Justice Department to convene a grand jury or persuading a regulatory agency to obtain the information sought. This is often a cumbersome process that hinders effective enforcement.

S. 571 creates a penalty where none now exists for individuals who willfully violate the law requiring reports on their transfer of money to foreign banks and the existence of their foreign bank accounts. This bill provides for a penalty up to the full amount of the foreign transaction involved in violation so that anyone willfully failing to report as required by law risks losing the full amount of the money being laundered.

S. 571 also strengthens the Bank Secrecy Act provision that permits the imposition of an inadequate civil penalty of $10,000 against financial institutions and their employees for willfully violating the law's reporting requirements.

In order to promote compliance with S. 571, S. 571 increases the penalty to the full amount of the transaction involved where there is proof that the failure to report was willful.

This morning we will also examine S. 2306, the Bank Secrecy Act Amendments of 1986. These amendments correct two deficiencies in current law that investigators and prosecutors working against criminal money launderers have detailed. A companion measure has been introduced in the House of Representatives by Congressman Pickel.

Section 1 of S. 2306 closes the loophole in present law increasingly used by launderers of drug money and other criminal profits. Currently, the Bank Secrecy Act only requires that deposits of more than $10,000 be reported on IRS currency transactions. To circumvent the law, money launderers often make multiple deposits of under $10,000 each within very brief periods of time in avoidance of the act's reporting rules. In other words, S. 2306 closes the so-called structuring loophole. The need to close this loophole is paramount because the Government has lost three major structuring cases on appeal in the last year—*United States* v. *Anzalone, United States* v. *Denamark, United States* v. *Varbel.*

S. 2306 makes structuring to avoid the reporting requirements of the act or causing a financial institution not to file the required report subject to the sanctions of the Bank Secrecy Act. S. 2306 allows, for the first time, property related to a violation of 31 U.S.C. 5313 to be seized and forfeited. This new provision targets the person who structures his deposits or otherwise subverts or attempts to subvert the actual reporting requirements in order to cause a financial institution not to file a required currency transaction report [CTR].

For the first time, this legislation will allow the Internal Revenue Service to seize and forfeit cash and property that is involved in a violation of the Bank Secrecy Act. Currently, laundered money cannot be seized because there's a difficult time in proving that there's a direct link between the laundered money and the particular criminal act such as drug trafficking.

S. 2306 also represents a careful effort to strengthen IRS enforcement authority against money laundering while protecting inno-

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cent third parties. For example, a person makes a series of deposits in a single day of under $10,000 each but the total of deposits exceeds $70,000. If the purpose of this activity is to cause a financial institution not to file the required report or if the deposits are structured so as to evade the reporting requirements of section 5313, the currency used or the property traceable to such currency would be subject to seizure and forfeiture.

The importance of this new section is that it permits forfeiture of money even if it cannot be directly traced to a drug sale or a crime.

I believe that that provision in and of itself will be a major deterrant and will enhance the ability of law enforcement officers to make a very real difference in what has become a very real way of life, particularly as it relates to drug traffickers and the manner in which they have been circumventing the present law.

I'm going to ask that the balance of my remarks be placed in the record as if read in their entirety and then proceed to the other members of the panel for their opening statements before we hear from our witnesses.

[The complete prepared statement follows:]

OPENING STATEMENT OF SENATOR ALFONSE D'AMATO

I want to thank our distinguised chairman, Senator Jake Garn, for authorizing this full Banking Committee hearing on two bills I have introduced to combat money laundering, S. 571, the Drug Money Seizure Act; and S. 2306, the Bank Secrecy Act Amendments of 1986. Both of these bills have been carefully crafted to address many of the concerns expressed in the interim report of the President's Commission on organized crime. They are designed to strike at the heart of the pernicious activity referrred to as "money laundering" enabling the Federal Government to prosecute successfully individuals who devise and implement the schemes that allow the laundering of funds realized from illegal activities.

The legislation we will discuss this morning is designed to discourage the continued abuse of our financial system by career criminals and their affiliates who "launder" the proceeds of their illegal activities through financial institutions in this country and abroad. I cannot overemphasize the need to wipe out money laundering which Judge Irving Kaufman, the Chairman of the President's Commission on Organized Crime, described as: "the lifeblood of organized crime." The enactment of S. 571 and S. 2306 will deal the underworld a crippling blow by arming the financial community and law enforcement authorities with the weapons needed to strike at the very heart of the narcotic trade and other activities engaged in by organized crime.

The introduction and passage of this legislation marks the beginning of what I perceive to be the second stage of the fight against money launderers and the criminal activities in which they engage. The first stage of the campaign against money laundering was to increase compliance with the Bank Secrecy Act. The Treasury Department's recent efforts, the congressional focus on money laundering and the increased commitment of Federal Bank regulatory agencies to monitor this area have resulted in improved compliance by the banking industry with the Bank Secrecy Act. In fact, it has been reported that the IRS CTR processing center in Detroit has been inundated since the disclosure of reporting deficiencies at the First National Bank of Boston.

Despite the increased compliance with the Bank Secrecy Act, the actual detection and prosecution of money launderers has not significantly increased. Therefore, I belive we must enter the second stage in the war against money laundering because it is time the relevant law enforcement agencies begin to crack down on the real criminals—the money launderers. The legislation accomplishes this by directly addressing the problem of money laundering by making the use of financial institutions by money launderers an actionable offense.

The Treasury and the IRS are to be commended for their efforts to enforce the Bank Secrecy Act by cracking down on those institutions that have violated the currency transaction reporting requirements of the act. The Treasury has committed additional resources to ensure compliance with the act and the banks have also made commendable efforts to comply with the act. Now that compliance examina-

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tions have become more effective and that bank compliance has vastly improved, I think more effort should be expended in detecting and prosecuting money launderers rather than spending an inordinate amount of the time settling civil claims with banks that may have inadvertently violated the reporting provisions and have demonstrated a willingness to comply with the act.

The legislation that we will discuss this morning is designed to assist Federal enforcement officials in their efforts to detect and apprehend money launderers. While it is important to ensure continued compliance with the reporting requirements of the act, the bulk enforcement effort should now be dedicated to catching the real bad actor—the money launderer.

S. 571, is a bill that I originally introduced in 1984. This legislation has been endorsed by important administration officials, recommended by the President's Commission on Organized Crime, and included in slightly modified form both in S. 1335, the administration's omnibus money laundering bill, and S. 1385, a separate bill introduced by my good friend and colleague, Senator DeConcini.

The provisions of S. 571, especially those granting the Treasury Department an administrative summons power, enjoy broad support in the Congress. it is my intention to have this bill marked up, reported out of committee, and brought to a vote in this session of the 99th Congress.

S. 571 has three very simple provisions to combat money laundering and to strengthen the Bank Secrecy Act.

First, it provides for administrative subpoena power in the Treasury Department to enforce the reporting requirements of the act. It will enable the Treasury Department to review systematically all cash, check, and other deposits and transfers to foreign banks that are so frequently made to launder drug money and other illegally acquired money. Under current law, for a subpoena to be obtained where money laundering is suspected, the Treasury Department must persuade the Justice Department to convene a grand jury.

The results of the present restriction on the Treasury Department's investigative authority is that only a small fraction of the money being laundered is ever recovered. As witnesses testified at the January 28 hearing of the Banking Committee and in other Senate Investigations, the present law enforcement system is viewed with contempt by professional money launderers.

In 1983, the Senate Permanent Subcommittee on Investigations issued a report on the involvement of offshore banks that identified over 150 recent cases of criminal use of offshore facilities. That report documented how successful and extensive money laundering operations have become.

It is time that our law enforcement efforts begin to match those of professional money launderers in number, thoroughness, and sophistication.

S. 571 will assist our law enforcement agencies in developing an effective deterrent against drug money laundering in many more cases, and to raise the professional criminal's chances of being detected to a much higher level of risk than he now faces.

The second provision of this bill strengthens the Bank Secrecy Act which currently permits the imposition of a woefully inadequate civil penalty of $10,000 against financial institutions and their employees for willfully violating the law's reporting requirements. In order to promote compliance with these requirements, S. 571 increases the penalty to the full amount of the transaction involved, where there is proof that the failure to report was willful.

Third, the Drug Money Seizure Act creates a penalty, where none now exists, for individuals who willfully violate the law requiring reports on their transfers of money to foreign banks. This bill provides for a penalty up to the full amount of the foreign transaction involved in the violation, so that anyone willfully failing to report as required by law risks losing the full amount of the money being laundered.

During the January 28, 1985 hearing, I heard extensive testimony concerning numerous money laundering cases and currency law violations involving tens of billions of dollars in drug profits moving through American banks and other institutions. Then, Assistant Secretary of the Treasury John Walker and Commissioner of Customs William von Raab testified that the approach taken in the bill the committee is examining this morning would result in a much improved law enforcement effort against money laundering. Although many civil actions have been brought against banks for technical violations of the BSA's reporting requirements, the real problem—the activities of the true criminal, the money launderers themselves—have not been curtailed. Legislation such as S. 571 is designed to attack this problem by facilitating the Government's effort to prosecute the money launderer.

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This morning, we will also examine S. 2306, the Bank Secrecy Act Amendments of 1986. These amendments correct many of the weaknesses in current law that criminal investigations and prosecutors working against criminal money launderers have long complained about. A companion measure has been introduced in the House of Representatives.

S. 2306 is designed to curtail specific types of money laundering activities. First, it prohibits currency structuring transactions and thereby reverses Federal court decisions. For the first time, this legislation will allow the Internal Revenue Service to seize and forfeit cash and property that is involved in a violation of the Bank Secrecy Act. Currently, laundered money cannot be seized because there is difficulty in proving that there is a "nexus" between the laundered money and a criminal activity. In most cases, the case involves illegal drugs. S. 2306 also represents a careful effort to strengthen IRS enforcement authority against money laundering, while protecting innocent third parties.

Section 1 of S. 2306 closes the loophole in present law used by launderers of drug money and other criminal profits. Because today's Bank Secrecy Act only requires that deposits of more than $10,000 be reported on IRS currency transaction reports [CTR's] money launderers often make multiple deposits of under $10,000 each, within very brief periods of time, to avoid the act's reporting rules.

In other words, our bill closes the so-called structuring loophole. The need to close this loophole is paramount because the Government has lost three major structuring cases on appeal in the last year: *United States* v. *Anzalone*, *Untied States* v. *Denamark*, and *United States* v. *Varbel*.

S. 2306 allows, for the first time, property related to a violation of 31 U.S.C. 5313 to be seized and forfeited. This new provision targets the person who structures his deposits, or otherwise subverts or attempts to subvert the act's reporting requirements, in order to cause a financial institution not to file a CTR.

For example, a person makes a series of deposits in a single day of under $10,000 each, but the total of deposits exceeds $70,000. If the purpose of this activity is to cause a financial institution not to file a required report or if the deposits are structured so as to evade the reporting requirements of section 5313(a), the currency used, or the property traceable to such currency, would be subject to seizure and forfeiture.

The importance of this new section is that it permits forfeiture of money even if it cannot be directly traced to a drug sale or other crime. Major drug traffickers and others engaged in organized crime are, of course, notoriously effective in covering the trail leading from their crimes to their profits. Under S. 2306, the laundered funds can be forfeited if the currency can be traced to the failure to file a CTR, or the property can be clearly traced to such currency.

Because we are establishing new legal principles, we have decided to proceed cautiously. Forfeitures under our bill will be subject to a defense that the owner's property violated the reporting rules was not willful or in reckless disregard of the act's reporting rules.

The forfeiture authority proposed in this bill is also much more limited than most forfeiture provisions already in existence. For example, under 26 U.S.C. 7302, any property used or intended for use in violation of the Internal Revenue laws may be forfeited.

S. 2306 does not allow the forfeiture of property if: (1) the person violating the domestic currency transactions requirements is a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission; (2) the owner is a good faith purchaser for value who took without notice of the violation; or (3) the violation was not willful.

I urge my colleagues to support both of these bills. I also hope that the markup of this legislation is imminent since it will provide badly needed weapons to the Government's arsenal in the battle against money laundering operations of organized crime.

Only when this legislation becomes law, and criminal money laundering becomes a much more frequent and vulnerable target of Federal law enforcement activity, will we have a serious chance of permanently crippling major drug trafficking and other criminal organizations in this country.

[Copies of prepared bills, S. 571 and S. 2306 follow:]

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II

99TH CONGRESS
1ST SESSION

S. 571

To amend subchapter II of chapter 53 of title 31, United States Code, relating to currency reports.

IN THE SENATE OF THE UNITED STATES

MARCH 5 (legislative day, FEBRUARY 18), 1985

Mr. D'AMATO (for himself, Mrs. HAWKINS, Mr. RUDMAN, Mr. PROXMIRE, Mr. ABDNOR, Mr. TRIBLE, Mr. RIEGLE, and Mr. WILSON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To amend subchapter II of chapter 53 of title 31, United States Code, relating to currency reports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Drug Money Seizure Act".

SECTION 2. Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a)" before "The";

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(2) by inserting ", except as provided in subsection (c)" before the semicolon at the end of paragraph (1);

(3) by striking out "and" at the end of paragraph (2);

(4) by redesignating paragraph (3) as paragraph (4);

(5) by inserting after paragraph (2) the following:

"(3)(A) examine any books, papers, records, or other data of domestic financial institutions pursuant to the recordkeeping and reporting requirements under this subchapter;

"(B) summon an officer or employee of a financial institution, or any person having possession, custody, or care of the reports or records required under the subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant material to such inquiry; and

"(C) take such testimony of the officer, employee, or person having possession of the relevant reports or records, under oath, as may be relevant or material to such inquiry; and"; and

(6) by adding at the end thereof the following:

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"(b) The purposes for which the Secretary of the Treasury may take any action described in paragraph (3) of subsection (a) include the purpose of investigating any offense connected with the administration or enforcement of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91–508.

"(c)(1) The Secretary of the Treasury may delegate the powers conferred by subsection (a)(3) to an appropriate supervising agency.

"(2) A summons may be issued under subsection (a)(3)(B) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of an appropriate Treasury bureau.".

SEC. 3. Section 5321(a) of title 31, United States Code, is amended—

(1) by striking out the first sentence of paragraph (1) and inserting in lieu the following: "A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) or causing such a violation is liable to the United States Government for a civil penalty of not more than—

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"(A) the amount of the transaction where the violation involves a transaction reporting requirement, or

"(B) $10,000 for any other violation."; and

(2) by adding at the end thereof the following:

"(4) A person willfully violating the provisions of section 5314 of this title or of a regulation prescribed under section 5314 is liable to the United States Government for a civil penalty of not more than the amount of the foreign transaction or foreign account involved in the violation.".

SEC. 4. Section 5312(a)(5) of title 31, United States Code, is amended to read as follows:

"(5) 'United States' means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Marianas, American Samoa, the Trust Territory, any other territory or possession of the United States, or a military diplomatic establishment.".

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II

99TH CONGRESS
2D SESSION

S. 2306

Entitled the "Bank Secrecy Act Amendments of 1986".

IN THE SENATE OF THE UNITED STATES

APRIL 15 (legislative day, APRIL 8), 1986

Mr. D'AMATO introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

Entitled the "Bank Secrecy Act Amendments of 1986".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Bank Secrecy Act (31 U.S.C. 5311 et seq.) is amended as follows:

SECTION 1. Section 5313 of title 31 of the United States Code is amended by adding to the end of subsection (a) a sentence which reads as follows: "No person shall cause or attempt to cause a domestic financial institution to fail to file a report required by this subsection, shall cause or attempt to cause a domestic financial institution to file a report required by this subsection that contains a material omission or misstatement of fact, or shall structure or assist in structuring a

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transaction for the purpose of evading the reporting requirements of this subsection.".

SEC. 2. Section 5317 of title 31 of the United States Code is amended by—

(1) revising the first sentence of section 5317(c) of title 31 of the United States Code to read as follows:

"(c) A monetary instrument being transported, or which has been transported, or any interest in any property, including any deposit in a financial institution, traceable to such instrument, may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.".

(2) adding a new subsection (d) which reads as follows:

"(d) United States coin or currency (or other such monetary instrument as the Secretary may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) of this chapter may be seized and forfeited to the United States Government under the procedures of subchapter C of chapter 75 of title 26 of the United States Code whenever a person (excluding a domestic financial institution examined by a Federal bank supervisory agency or a finan-

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cial institution regulated by the Securities and Exchange Commission liable under subsection 5321(a) of this chapter) violates section 5313(a) of this chapter. No property or interest in property shall be forfeited under this subsection if it can be established that the owner is a bona fide purchaser for value who took without notice of the violation or if the violation or attempted violation of section 5313(a) was not willful.".

SEC. 3. Section 5321 of title 31 of the United States Code is amended by—

(1) adding to subsection (a) a new paragraph (4) to read as follows:

"(4) The Secretary may impose a civil penalty on a person or persons (excluding a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission) willfully violating section 5313(a) of this chapter. A civil penalty under this paragraph may not be more than the amount of the United States coins and currency (or other monetary instruments the Secretary may prescribe) for which a report was required under section 5313(a) of this chapter. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(d) of this title.".

(2) deleting "or (2)" from subsection (b) and adding in lieu thereof ", (2) or (4)".

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(3) deleting "5317(b)" in subsection (c) and adding in lieu thereof "5317 (c) or (d)" and by deleting "subsection (a)(2)".

SEC. 4. Section 7302 of title 26 of the United States Code is amended by deleting "such property" in the second sentence and inserting in lieu thereof "property under this section and under the forfeiture provisions of title 31 of the United States Code enforced or administered by the Internal Revenue Service" and by adding "or under the provisions of title 31 of the United States Code enforced or administered by the Internal Revenue Service" after "section" in the fourth sentence.

SEC. 5. Section 7321 of title 26 of the United States Code is amended by adding "or under any provision of title 31 of the United States Code enforced or administered by the Internal Revenue Service" immediately following "title".

SEC. 6. Section 7327 of title 26 of the United States Code is amended by inserting immediately following "internal revenue laws", the following: "or under provisions enforced or administered by the Internal Revenue Service under title 31 of the United States Code, to the extent not inconsistent with the provisions of title 31.".

SEC. 7. Section 7608(b) of title 26 of the United States Code is amended by adding "or any provision of title 31 of the United States Code enforced or administered by the In-

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ternal Revenue Service" immediately following "responsible" in paragraph (1) and immediately following "the internal revenue laws" in paragraph (2)(C).

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Senator D'AMATO. Senator Hecht.

OPENING REMARKS OF SENATOR HECHT

Senator HECHT. Thank you, Mr. Chairman. I commend you on holding these hearings and as you alluded to in your opening statement, casinos have been brought into this equation—and being from Nevada, we are quite concerned about this. We want to cooperate in every way with curtailing the drug money which is being laundered, however, we do have an industry that we have to protect in Nevada so we have to draw that fine line.

I thank you.

Senator D'AMATO. Senator Mattingly.

OPENING STATEMENT OF SENATOR MATTINGLY

Senator MATTINGLY. Mr. Chairman, as a cosponsor of your S. 571, I'm pleased that the committee is holding a hearing on this and also as well as on S. 2306. It is my hope that we're going to report legislation out of here very soon legislation to increase the tools which the Federal law enforcement officials can employ in prosecuting the individuals involved in the money laundering activities and, in doing so, to stop or thwart the operations of the drug traffickers in the country.

I think we all agree that money stands at the heart of the drug trade. Without a profit motive and without increased capital to finance new drug purchases, the criminals have little incentive or means to engage in illegal drug business. As we know, the drug trade and money laundering enterprise is big business—I'm not quite sure anybody really knows just how big it is in the United States. You hear all sorts of ballpark figures. I know the attorney general of my State said the other day that it's about $10.5 billion in the State of Georgia. So you're talking about a lot of money.

My primary motivation in supporting and cosponsoring S. 571 is to get at the money launderer who is associated with the drug trafficker, but I want to say that my concern also about money laundering also extends beyond the drug issue. For example, I have a genuine concern for the legitimate small businessman who has to compete against those shell businesses which only exist to provide cover for the money laundering activities.

So, Mr. Chairman, I congratulate you for holding the hearing and I believe that we have an obligation to do all that we can to facilitate the Federal officials' ability to locate and prosecute those engaged in this money laundering and to seize the illegal profits and the property tied to those profits.

I will have some questions for the witnesses later. I will probably submit them in writing, Mr. Chairman. Keep up the good work.

[The complete prepared statement of Senator Mattingly follows:]

PREPARED STATEMENT OF SENATOR MATTINGLY

Mr. Chairman, as a cosponsor of S. 571, the Drug Money Seizure Act, I am pleased that the committee is focusing on that measure today as well as on S. 2306, the Bank Secrecy Act Amendments. It is my hope that we will report legislation soon to increase the tools which Federal law enforcement officials can employ in prosecuting individuals involved in money laundering activities, and, in doing so, thwart the operations of drug traffickers in this Nation. Clearly, money stands at the heart of the drug trade. Without a profit motive and without increased capital

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to finance new drug purchases, drug criminals have little incentive or means to engage in the illegal drug business. And, as we know, the drug trade and money laundering enterprise is big business—estimates of just how big vary greatly. But we all agree it is large. Just last week the attorney general of my home State of Georgia indicates it represents an enterprise of over $10 billion annually in Georgia. I am certain other States have similar stories.

My primary motivation in supporting and cosponsoring S. 571 was to get at the money launderer himself or who is associated with a drug trafficker. But I want to say that my concern about money laundering also extends beyond the drug issue. For example, I have a genuine concern for the legitimate small businessman who has to compete against those shell businesses which exist only to provide cover for money laundering activities.

Senator D'AMATO. Thank you very much, Senator.

Senator Dixon.

OPENING STATEMENT OF SENATOR DIXON

Senator DIXON. Mr. Chairman, I think this morning's hearing is an extremely important one. There's a war on drugs going on. Unfortunately, law enforcement is not winning the war and the result is that we are all losing. The country is being flooded by an ever-growing tide of cocaine, heroin, and other illegal drugs. Changing that situation requires action on a number of fronts. Some of the actions we need to take are obvious—increasing the resources of law enforcement, improving our ability to catch smugglers at our borders, and working to stop the production of drugs at its sources abroad are just a few of the steps that come to mind.

Other steps are far less obvious but just as important. For that reason, I'd like to take this opportunity to congratulate the author of the two bills before this committee today, my distinguished colleague and warm friend, Senator Al D'Amato, of New York.

His legislation provides the Treasury Department and other Federal officials with the tools they need to trace drug money. Drug dealers have attempted to use legitimate businesses and financial institutions to launder their illegal funds. Current law appears to be inadequate to prevent dealers from carrying on this activity.

I look forward to hearing from the expert witnesses before the committee this morning. I look forward to working with Senator D'Amato and the other members of this committee in an effort to quickly report legislation to the full Senate that improves the ability of our Government to prevent money laundering. And I thank the Chair.

Senator D'AMATO. I thank my distinguished colleague for his gracious comments.

Senator Sasser.

OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. Thank you, Mr. Chairman.

I think that the witnesses that we have here this morning to testify on the Drug Money Seizure Act and the Bank Secrecy Act Amendments can provide us with some very helpful guidance on the serious problems that we have before us.

Now if there's anyone here who believes that major drug money problems are limited to coastal States, then I want to disabuse them of that misconception right now.

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For example, in 1982, in Cleveland, TN, a small town in eastern Tennessee, Federal, State, and local law enforcement agencies confiscated 1,100 pounds of pure cocaine worth nearly $400 million. They also seized vehicles, weapons, and almost $500,000 in cash in this one cocaine bust. It was the second largest cocaine seizure in the history of this country.

Now law enforcement officials in eastern Tennessee believe those drugs were flown directly into our State from Colombia. Now, Mr. Chairman, this is just one example of drugs being smuggled into an inland, rather insular State. The flow of drugs into the second tier of States is continuing. In fact, it's increasing as we increase our law enforcement efforts in Florida and in other coastal States.

Law enforcement officials, for example, in my native State of Tennessee tell me that they are intercepting only a very, very small portion of the drugs that come into our State, perhaps as little as 1 percent in some areas. They estimate that cocaine alone is a $500 million business in the State of Tennessee.

In response to that situation, I introduced legislation to help reimburse State and local law enforcement officers and agencies who are hard-pressed for the time and technical resources to assist the Federal drug enforcement efforts, which really are not that widespread. The drug enforcement people are spread very, very thin in many of the insular States, the so-called second tier States.

I introduced the Federal, State, and Local Drug Forfeiture Fund Act of 1982, which provided for proceeds from Federal drug seizures to be shared with State and local agencies to reflect their participation in the Federal enforcement efforts. And I am pleased to say that we included the provisions of that bill in the 1984 Comprehensive Crime Control Act. The result has been very salutary for local law enforcement agencies in that when they make a substantial arrest, they can share in the funds, the vehicles, and the proceeds that are confiscated from that effort.

Now, Mr. Chairman, I think the current efforts to get at the problem by seeking to limit the usefulness of the drug runners' illgotten gains are very helpful and I commend you for taking the lead on this. We have to attack this problem from every vantage point. Revelations of the abuse of the reporting requirements imposed on banks are very disturbing. I think it's no secret that for some banks, paying the $10,000 fine or the risk of paying it is really a small price to pay for the large cash deposits that may find their way into the vaults of these particular banks. We need to strengthen enforcement and provide Federal agencies with new enforcement tools.

Mr. Chairman, I have further portions of my statement that I will include in the record in the interest of time today, but let me say that I look forward to hearing from the witnesses here today and working with my colleagues on the committee to see if we can fashion legislation to stop drug dealers from reaping the profits of this vile poison that they spread among our people. In my view, these drug dealers and the drug pushers are by far the vilest and the worst criminal element that we have ever faced in the history of this country.

Thank you.

Senator D'AMATO. Thank you, Senator Sasser.

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PREPARED STATEMENT OF SENATOR SASSER

Thank you, Mr. Chairman.

The witnesses we have here this morning, to testify on the Drug Money Seizure Act and the Bank Secrecy Act amendments, can provide us with some excellent guidance on the serious problems before us. If there is anyone here who believes that major drug-money problems are limited to coastal States, I want to clear up that misconception.

In 1982, in Cleveland, TN, Federal, State, and local law enforcement agents confiscated 1,100 pounds of pure cocaine worth nearly $400 million. Also seized were vehicles, weapons, and $450,000 in cash. This was the second largest cocaine seizure in U.S. history. Law enforcement officials believe the drugs were flown into Tennessee directly from Colombia.

Mr. Chairman, that is just one example of drugs being smuggled into my State. The flow of drugs into the second tier of States is continuing. Law enforcement officials in Tennessee tell me that they are intercepting only a small portion of the drugs brought into the State—perhaps as little as 1 percent in some areas. They estimate that cocaine alone is a $500 million business in east Tennessee.

In response to that situation, and to help reimburse State and local law enforcement agencies for the time and resources they put into assisting Federal drug enforcement efforts, I introduced S. 2803, the Federal, State and Local Drug Forfeiture Fund Act of 1982. It provided that proceeds from Federal drug seizures be shared with State and local agencies, to reflect their participation in Federal enforcement efforts. I was pleased that we were able to include the provisions of that bill in the 1984 Comprehensive Crime Control Act.

Law enforcement officials in my State tell me that this amendment is working well and that the money, vehicles, and other benefits they are receiving are enabling them to increase their enforcement efforts.

I think the current efforts to get at the problem, by seeking to limit the usefulness of the drug-runners' ill-gotten gains, are helpful. We have to attack this problems from every vantage point. Revelations of abuse of the reporting requirements imposed on banks have been very disturbing. We need to strengthen enforcement, and to provide Federal agencies with new enforcement tools.

Obviously, we have to take very careful steps whenever there are fourth amendment questions of search and seizure involved.

S. 571, the Drug Money Seizure Act, is one approach to giving the Federal Government the tools to detect and punish drug dealers who attempt to disguise their profits by laundering them through legitimate financial institutions.

S. 2306, the Bank Secrecy Act amendments, would tighten existing reporting requirements, and provide for forfeiture procedures. I think it's obvious that the reporting requirements have to be strengthened, and I will have questions about how the bill before us today would actually work.

Finally, I want to return to the forfeiture issue for just a moment. I am inclined to think we should insure that funds recovered under measures such as S. 571 and S. 2306 should be included in the funds available for sharing with State and Local law enforcement agencies.

I look forward to working with the witnesses here today and with my colleagues on the committee to see if we can fashion legislation to stop drug dealers from reaping the profits of the poison they are spreading among our people.

Senator D'AMATO. Our first panel consists of Francis Keating, Assistant Secretary for Enforcement, Department of the Treasury; and Brian Bruh, Director, Office of Investigations, Criminal Investigation Division, Internal Revenue Service.

Gentlemen, proceed.

STATEMENT OF FRANCIS A. KEATING II, ASSISTANT SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY

Mr. KEATING. Thank you, Senator.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you to discuss legislative responses to the problems of money laundering, especially legislative initiatives that will enhance Treasury's enforcement of the Bank Secrecy Act.

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This is my first opportunity to testify before a Senate panel on this subject since I assumed the position of Assistant Secretary some 4 months ago, and to affirm to you my commitment to rigorous and efficient enforcement of the Bank Secrecy Act.

I especially want to thank Senator D'Amato who early on recognized the magnitude of the money laundering problem and was the earliest proponent of measures to strengthen Treasury's enforcement capability under the Bank Secrecy Act.

I am pleased to have with me today Brian Bruh, Director of the Office of Investigations, Criminal Investigation Division of the Internal Revenue Service. Mr. Bruh will answer questions regarding the Internal Revenue Service's role in Bank Secrecy Act enforcement programs. He will also discuss specific cases supportive of the need for the proposed forfeiture authority for funds underlying domestic reporting violations.

Originally, Mr. Richard Wassenaar, Assistant Commissioner of the Internal Revenue Service for Criminal Investigations, was to have testified with me today. Unfortunately, Mr. Wassenaar was hospitalized suddenly this week. His statement has been made available to the committee and I'm also informed, Senator, that his condition is improving.

IMPORTANCE OF THE ACT TO LAW ENFORCEMENT

Before turning to the legislative measures under discussion, I would like to discuss briefly the importance of the Bank Secrecy Act to law enforcement and recent Treasury initiatives to improve the compliance by financial institutions with the requirements of the act.

The enforcement and administration of the Bank Secrecy Act is the centerpiece of Treasury's efforts to combat money laundering. The reporting data generated with respect to the act and the regulations under it are essential to our country's investigations into drug trafficking, organized crime, tax evasion, and a host of related offenses.

Some of the most important uses of the information pertain to the 13 task forces created to investigate organized crime and drug trafficking. Since July 1983, these task forces have initiated over 1,200 cases. They have resulted in the indictment of 8,500 individuals and resulted also in the conviction of 3,400 of those people.

In order to maximize the utility of the information required under the Bank Secrecy Act, universal compliance with the act by all financial institutions is essential. To that end, Treasury has devoted significant effort and resources to compliance enforcement.

For instance, Treasury has imposed a number of civil penalties against financial institutions for past noncompliance. We believe that Treasury's rigorous enforcement of the Bank Secrecy Act, including the imposition of publicly announced substantial civil penalties where appropriate, has contributed to enhanced awareness of the requirements of the Bank Secrecy Act and improved compliance.

In July 1985, the Treasury Department established the Office of Financial Enforcement to assist in implementing and administering the Bank Secrecy Act regulations. The establishment of this

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office provided a focal point for Bank Secrecy Act related activity within the Treasury Department and acknowledged the increasing importance of the act in Treasury's law enforcement efforts.

There has also been a very large commitment of resources to Bank Secrecy Act enforcement by both the Customs and the Internal Revenue Service. The Internal Revenue Service has established a separate division in Detroit to handle Bank Secrecy Act reporting matters. It has taken a number of steps to meet the temporary backlog in processing of currency transaction reports that resulted from the unanticipated surge in reporting following the *Bank of Boston* case and the permanent increase in filing resulting from the recent heightened awareness of the Bank Secrecy Act requirements.

STRENGTHENED REGULATIONS OF THE ACT

In the last year we have strengthened the Treasury Bank Secrecy Act regulations in several important respects. For example, as referenced by Senator Hecht, on May 7, 1985, regulations became effective that designated casinos as financial institutions subject to Bank Secrecy Act reporting and recordkeeping requirements. We are discussing a number of other regulatory amendments, including regulatory solutions to the problem of structuring transactions to avoid the reporting requirements of the Bank Secrecy Act. Structuring includes the well-known practice of smurfing.

These revisions are being discussed within Treasury and with the Department of Justice and should be published in the Federal Register within the next few weeks.

As with all amendments to the Bank Secrecy Act regulations, Treasury will consider carefully the financial and operational impact of regulatory changes on financial institutions as it seeks to meet the legitimate needs of law enforcement.

I would now like to address the various proposals under discussion to bolster our attack against money laundering and to improve Treasury's enforcement of the Bank Secrecy Act.

First is S. 1335, the Money Laundering and Related Crimes Act, which was developed jointly by the Departments of Justice and Treasury. I would like to remark on the most critical revisions to the Bank Secrecy Act contained in that bill.

Under S. 1335, the Secretary would be given, for the first time, summons authority both for financial institution witnesses and documents in connection with Bank Secrecy Act violations. This authority was among the legislative recommendations in the October 1984 report of the President's Commission on Organized Crime on money laundering and is also contained, as Senator D'Amato referenced, in S. 571 and S. 1385.

This authority is essential both to investigate violations and to assess the appropriate level of civil penalties once a violation is discovered. This authority is also especially needed for enforcement of the Bank Secrecy Act with respect to miscellaneous nonbank financial institutions such as casinos and foreign currency brokers which number in excess of 3,000 institutions.

The responsibility for compliance review of these institutions has been delegated to the Internal Revenue Service. However, current-

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ly the IRS summons authority is restricted only to title 26 purposes. Therefore, in examining those institutions for title 31 violations, IRS must rely solely on voluntary cooperation. Under this bill a summons would be issued only by the Secretary or with his approval by a supervisory level official of an organization to which the Secretary has delegated Bank Secrecy Act enforcement. An agent or bank examiner in the field could not issue a summons on his or her own authority.

S. 1335 also provides important revisions to the Right to Financial Privacy Act [RFPA]. The revisions to the RFPA contained in the administration's money laundering bill can be considered as an adjunct to that bill with applications separate from the subject of criminal money laundering legislation or enforcement of the Bank Secrecy Act.

The most important and what should be the least controversial of the FRPA revisions is the amendment to subsection 1103(c) of the RFPA. Currently, section 3403(c) of title 12 provides that nothing in the act shall preclude a financial institution from notifying a Government authority that the institution has information which "may be relevant to a possible violation of any statute or regulation." The statute gives no guidance on what information can be given by the bank without running the risk of exposure to civil liability under the Right to Financial Privacy Act.

The proposed amendment sets out explicitly that enough information can be given to enable Federal law enforcement authorities to proceed with legal process, for example a summons, subpoena, or search warrant in accordance with the act. This information, at a minimum, must include the nature of the suspicious activity, the name of the customer, and other identifying information necessary to identify the customer or the account involved.

We believe that there should be very little opposition in the financial community to this particular revision of the RFPA. The revision imposes no new legal duty on financial institutions and clarifies the right of financial institutions to act as good citizens without risk of civil liability.

For consistent application throughout the United States, this amendment must be accompanied by the proposed preemption provision so that a financial institution that complies with the RFPA will not run afoul of any more restrictive State privacy laws. The proposed clarification of the good faith defense to civil liability is also needed to protect financial institutions who cooperate with Federal law enforcement in good faith within the confines of the Right to Financial Privacy Act.

In addition to the administration's money laundering bill, there is another legislative initiative supported by the administration on which I urge favorable and early action. This is S. 2306, introduced last week by Senator D'Amato. This bill would prohibit structuring of currency transactions to avoid the $10,000 currency transactions reporting requirement.

SMURFING

Structuring includes the well-known practice of smurfing. Recent decisions as, you have indicated earlier, Senator——

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Senator D'AMATO. At this point, I don't know if your statement addresses smurfing, but would you go into that?

Mr. KEATING. Yes, sir. By anecdote or do you want me to complete the statement?

Senator D'AMATO. Well, you can go into it by anecdote or complete statement, however, I think it's important that for the record, you describe smurfing. You say it's well known. It's only well known among criminals.

Mr. KEATING. This is the structuring of small cash transactions within a financial institution to avoid the $10,000 threshold reporting requirement of the Bank Secrecy Act and to avoid the interest of law enforcement as a result of those series of smaller transactions, which all taken together add up to substantial transactions with a view toward avoiding the strictures of the act.

As you have indicated, Senator, in three Federal circuits they've made it clear that the current law is inadequate to sustain consistent prosecutions for structuring. The proposal would make a person who structures transactions to avoid the currency reporting requirement or who causes a financial institution not to file a required report to be subject to the criminal and civil sections of the act.

The bill also provides seizure and forfeiture authority for currency related to a domestic CTR or cash transaction report reporting violation for interest in property traceable to the currency. The forfeiture would not be applicable to domestic financial institutions examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission.

There have been a number of past cases in which the absence of forfeiture authority allowed the proceeds of criminal enterprises to elude the grasp of the Government.

Treasury must respectfully take issue with one proposal in S. 1385. This bill would require a financial institution to submit its list of customers exempt from the requirements of the Bank Secrecy Act to Treasury every quarter. Treasury would then have to review and approve or revoke the list within 90 days. The financial institution would consider the exempt list approved unless notified otherwise by Treasury within the 90-day period.

Under the current regulations a bank may exempt from reporting certain cash deposits and withdrawals of accounts of retail businesses in amounts commensurate with the lawful customary conduct of such a business. The bank has a continuing duty to monitor the qualifications for such exemptions. It would be unwise in our view to shift the burden of monitoring the eligibility of bank customers for exemptions away from the bank. The bank is in the best position to know its customers, the normal course of those customers' business operations, and any change in their status.

Moreover, the provision would take an army of Treasury employees to enforce. The provision is accordingly inefficient, burdensome, and we believe unnecessary.

Senator D'AMATO. I hope you make it clear for the record that those are not the provisions that are being considered today by this committee.

Mr. KEATING. That is correct, Senator.

Senator D'AMATO. OK.

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Mr. KEATING. We are exploring other solutions to past problems with banks and proper placement of customers on exempt lists. For instance, we are considering a regulation under which a customer would have to attest to information contained in a bank's request for an exemption. Under S. 2306, a customer who causes a financial institution to put it on the exempt list on the basis of false information provided by that customer would be liable under the Bank Secrecy Act.

We are also planning to work with the banking industry to educate further banks on exemption procedures. We are considering issuing a Treasury publication on the subject that would be available to all financial institutions.

This concludes my prepared remarks, Senator, and I appreciate the opportunity of sharing this information with you and the members of the committee.

[The complete prepared statement follows:]

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SUMMARY OF THE STATEMENT OF THE HONORABLE FRANCIS A. KEATING, II
ASSISTANT SECRETARY (ENFORCEMENT)
U.S. DEPARTMENT OF THE TREASURY
BEFORE THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE
MAY 1, 1986

Enforcement of the Bank Secrecy Act

- The currency reporting data required under the Bank Secrecy Act are essential to investigations into drug trafficking, organized crime, tax evasion and related matters.
- Treasury is committed to rigorous and efficient enforcement of the Bank Secrecy Act in the interest of full compliance by all financial institutions. Among Treasury's recent enforcement measures are:
  - Civil penalties against financial institutions for past non-compliance.
  - Improvement of Bank Secrecy Act examination procedures.
  - Establishment of the Office of Financial Enforcement.
  - Regulatory improvements, including designation of casinos as financial institutions subject to the Act.

Legislation

- Treasury supports pending legislative initiatives to aid in the fight against money laundering and to enhance Treasury's enforcement of the Bank Secrecy Act. Treasury urges early and favorable action on S. 1335, the "Money Laundering and Related Crimes Act."
- Of critical importance is enactment of summons authority for Treasury under the Bank Secrecy Act. Summons authority was among the recommendations of the President's Commission on Organized Crime and is contained in S. 1335, S. 571, and S. 1385.
- S. 1335 also includes other improvements to the Bank Secrecy Act such as a civil penalty for negligent violations and extension of the statute of limitations for civil penalties.
- Treasury also supports S. 2306 which would provide forfeiture authority for funds underlying domestic violations of the Bank Secrecy Act and make structuring to avoid the reporting requirements of the Act subject to civil and criminal sanctions.
- Treasury also urges revisions to the Right to Financial Privacy Act to refine the extent to which financial institutions may cooperate in law enforcement efforts without risk of civil liability.

STATEMENT OF THE HONORABLE FRANCIS A. KEATING, II

ASSISTANT SECRETARY (ENFORCEMENT)

U.S. DEPARTMENT OF THE TREASURY

BEFORE THE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

MAY 1, 1986

Mr. Chairman and Members of the Committee:

I sincerely appreciate the opportunity to appear before you to discuss legislative responses to the problems of money laundering, especially legislative initiatives that will enhance Treasury's enforcement of the Bank Secrecy Act. This is my first opportunity to testify before a Senate panel on this subject since I assumed the position of Assistant Secretary last December and to affirm to you my commitment to rigorous and efficient Bank Secrecy Act enforcement.

I especially want to thank Senator D'Amato who early on recognized the magnitude of the money laundering problem and was the earliest proponent of measures to strengthen Treasury's enforcement capability under the Bank Secrecy Act.

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Before turning to the legislative measures under discussion, I would like to discuss briefly the importance of the Bank Secrecy Act to law enforcement and recent Treasury initiatives to improve the compliance by financial institutions with the requirements of the Act.

Importance of the Bank Secrecy Act

The enforcement and administration of the Bank Secrecy Act is the centerpiece of Treasury's efforts to combat money laundering. The reporting data generated pursuant to the Act and the regulations under it are essential to our country's investigations into drug trafficking, organized crime, tax evasion and a host of related offenses. The investigations that rely on the information are not Treasury's alone. Other federal agencies and state and local law enforcement use this information to uncover and attack the financial base of criminal enterprises.

Some of the most important uses of the information pertain to the thirteen task forces created to investigate organized crime and drug trafficking. Since becoming fully operational in July of 1983, these task forces have initiated over 1200 cases. They have resulted in the indictment of 8500 individuals and 3400 convictions.

These statistics are only part of the story. Two out of every three of those cases have a financial component, and an

even larger percentage use Treasury's financial analytical capability in one way or another. This analytical capability, is wholly dependent on the Bank Secrecy Act reporting information. This information, when analyzed, can provide direct leads for new investigations. It can provide support for ongoing investigations. And even where a specific investigation is not involved, the information allows us to track currency flows and detect abnormal patterns that could be an indication of illicit financial activity. This information may reflect the need for international law enforcement cooperation.

Treasury's Compliance Program

Treasury is committed to fulfillment of the statutory mandate of the Bank Secrecy Act of requiring reports and records of information "having a high degree of usefulness to criminal, tax, and regulatory investigations or proceedings." In order to maximize the utility of the required information, universal compliance with the Bank Secrecy Act by all financial institutions is essential. To that end, Treasury has devoted significant effort and resources to compliance enforcement.

For instance, Treasury has imposed a number of civil penalties against financial institutions for past non-compliance. In the wake of the publicity surrounding the Bank of Boston case, and in good measure as a response to Congressional hearings, over sixty banks or bank holding companies have come forward to

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Treasury with past violations of the Bank Secrecy Act. Some have come forward as a result of bank regulatory examinations, particularly those of the Comptroller of the Currency. To date, sixteen civil penalties have been assessed under 31 U.S.C. § 5321, ranging from $112,000 to $4.75 million in the case of Bank of America.

We believe that Treasury's rigorous enforcement of the Bank Secrecy Act, including the imposition of publicly announced, substantial civil penalties, where appropriate, has contributed to enhanced awareness of the requirements of the Bank Secrecy Act. As a consequence, and as confirmed in our dealings with many banks and the increased volume of Currency Transaction Reports, we believe that overall compliance has improved and that compliance has become a high priority with many major financial institutions.

Improved Examination Procedures

Another major initiative to ensure full compliance with the Bank Secrecy Act has been Treasury's work with bank supervisory agencies to improve and standardize Bank Secrecy Act examination procedures.

As many of the civil penalty cases and the Bank of Boston case demonstrated, the procedures being used by the examiners were not sufficient to ensure that all violations of the Act

would be detected, particularly failures to report international bank-to-bank transactions. These procedures needed to be improved, and a number of other issues also had to be considered in order to make compliance examinations more effective. To address these matters, we had a series of meetings with the Federal bank supervisory agencies which resulted in the issuance of uniform procedures for examiners for checking the compliance of financial institutions with the Bank Secrecy Act.

Commitment of Treasury Resources

In July, 1985, the Treasury Department established the Office of Financial Enforcement to assist in implementing and administering the Bank Secrecy Act regulations. The establishment of this office provided a focal point for Bank Secrecy Act related activity within the Treasury Department and acknowledged the increasing importance of the Act in Treasury's law enforcement efforts. The office has broad responsibilities for the compliance activities of all agencies that have been delegated responsibilities under the Act, and there has been an increased commitment of staff resources to the office.

In addition to the increase in the Office of Financial Enforcement, there has been a very large commitment of resources by both the Customs and the IRS. The IRS has established a separate division in Detroit to handle BSA reporting matters. It has taken a number of steps to meet the temporary backlog in

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processing of Currency Transaction Reports that resulted from the unanticipated surge in reporting following the Bank of Boston case and the permanent increase in filing resulting from the recent heightened awareness of Bank Secrecy Act requirements.

Regulatory Initiatives

Since last year, we have strengthened the Treasury Bank Secrecy Act regulations in several respects. On May 7, 1985, regulations became effective that designated casinos as financial institutions subject to Bank Secrecy Act reporting and recordkeeping requirements. As evidenced in hearings by the President's Commission on Organized Crime last summer, money laundering through casinos may have been even more widespread than once thought. We believe that the new regulations have reduced the attactiveness of the use of casinos for money laundering.

A regulatory amendment pertaining to international transactions was published as a final rule last summer. Under the regulations, Treasury will be able in the future to require a financial institution or a selected group of financial institutions to report specified international transactions, including wire transfers or cashier's checks, for defined periods of time. We envision that this will require reporting of transactions with financial institutions in designated foreign locations that would produce information especially useful in identifying individuals

and companies involved in money laundering and tax evasion. The Internal Revenue Service's Office of Criminal Investigations is developing a plan for the initial use of this regulatory authority.

We are also discussing a number of other regulatory amendments, including regulatory solutions to problems of "smurfing" and structuring transactions to avoid the reporting requirements of the Bank Secrecy Act. These revisions are being discussed within Treasury and with the Department of Justice and should be published in the Federal Register within the next few weeks. As with all amendments to the Bank Secrecy regulations, Treasury will consider carefully the financial and operational impact of regulatory changes on financial institutfons as it seeks to meet the needs of law enforcement.

Legislation

I would now like to address the various proposals under discussion to bolster our attack against money laundering and to improve Treasury's enforcement of the Bank Secrecy Act.

First is S. 1335, the "Money Laundering and Related Crimes Act," which was developed jointly by the Departments of Justice and Treasury. I would like to remark on the critical revisions to the Bank Secrecy Act contained in the bill. I understand that the Department of Justice will address the provisions of the bill

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establishing the criminal offense of money laundering and related revisions to Title 18.

Most important, under S. 1335 the Secretary would be given for the first time summons authority both for financial institution witnesses and documents in connection with Bank Secrecy Act violations. This authority was among the legislative recommendations in the October, 1984 report of the President's Commission on Organized Crime on money laundering and is also contained in S. 571 and S. 1385.

Under S. 1335, the Secretary may summon a financial institution officer, or an employee, former officer, former employee or custodian of records, who may have knowledge relating to a violation of a recordkeeping or reporting violation of the Act and require production of relevant documents. This authority is essential both to investigate violations and to assess the appropriate level of civil penalties once a violation is discovered.

This authority is especially needed for enforcement of the Bank Secrecy Act with respect to miscellaneous non-bank financial institutions, such as casinos and foreign currency brokers, which number in excess of 3,000. The responsibility for compliance review of these institutions has been delegated to the Internal Revenue Service. However, currently, the IRS summons authority is restricted to Title 26 purposes. Therefore, in examining

these institutions IRS must rely on voluntary cooperation.

Under this bill, a summons would be issued only by the Secretary or with his approval by a supervisory level official of an organization to which the Secretary has delegated Bank Secrecy Act enforcement authority, e.g., the Internal Revenue Service, the Comptroller of the Currency or the Customs Service. An agent or bank examiner in the field could not issue a summons on his or her own authority.

The bill also provides for a civil penalty for negligent violations of the Bank Secrecy Act. Currently, Treasury has authority to assess civil penalties for "willful" violations under 31 U.S.C. § 5321. "Willful" in a civil penalty context means with specific intent or with reckless disregard of the law. Nevertheless, mere negligent non-filing of currency reports deprives the government of potentially useful law enforcement information to the same extent as willful non-filings. The prospect of penalties for negligent violations should encourage financial institutions to give more attention to good compliance.

A provision is added to the civil penalty statute to clarify that criminal penalties under § 5322 and civil penalties under § 5321 are cumulative. This provision makes explicit that if the Secretary of the Treasury assesses a civil penalty in a case and then refers the case to the Department of Justice for criminal prosecution, a court should impose criminal penalties without

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reference to whether a civil penalty has been imposed. Similarly, if a criminal conviction were to come before assessment of a civil penalty, the Secretary of the Treasury is free to impose the full measure of civil penalties available. I must emphasize that we do not view this provision as new authority, but as a clarification of existing law.

Section 5(b) revises 31 U.S.C. § 5319 relating to disclosure by the Secretary of the Treasury of information reported under the Bank Secrecy Act. Currently, the Secretary is required to make such information available to a Federal agency upon request. The amendment clarifies that the Secretary may also make this information available to a State or local agency and may make disclosure to any Federal agency if he has "reason to believe" the information would be useful to a matter within the receiving agency's jurisdiction, with or without a request. The bill also clarifies that disclosure may also be made to the intelligence community for national security purposes.

Finally, section 5(f) amends the Bank Secrecy Act definition of "monetary instrument" to eliminate any possibility that the current definition could be viewed as a bar to the defining of the term "monetary instrument" by regulation to include, for example, cashier's checks and checks drawn to fictitious payees.

S. 1335 also provides important revisions to the Right to Financial Privacy Act (RFPA). The revisions to the RFPA con-

tained in the Administration's money laundering bill can be considered as an adjunct to that bill, with application separate from the subject of criminal money laundering legislation or enforcement of the Bank Secrecy Act.

The most important and what should be the least controversial of the RFPA revisions is the amendment to subsection 1103(c) of the RFPA, 12 U.S.C. § 3403(c). Currently, § 3403(c) provides that nothing in the Act shall preclude a financial institution from notifying a government authority that the institution has information "which may be relevant to a possible violation of any statute or regulation." The statute gives no guidance on what information can be given without running the risk of exposure to civil liability under the RFPA. The proposed amendment sets out explicitly that enough information can be given to enable Federal law enforcement authorities to proceed with legal process, e.g., summons, subpoena, or search warrant, in accordance with the RFPA. This information at a minimum must include the nature the suspicious activity, the name of the customer, and other identifying information necessary to identify the customer or the account involved.

We believe you should find very little opposition in the financial community to this particular revision of the RFPA. The revision imposes no new legal duty on financial institutions, clarifies the right of financial institutions to act as good citizens without risk of civil liability, far outweighs any

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jeopardy to legitimate privacy interests, and would be of major assistance to Federal law enforcement.

For consistent application throughout the United States, this amendment must be accompanied by the proposed preemption provision so that a financial institution that complies with the RFPA will not run afoul of any more restrictive state privacy laws. The proposed clarification of the "good faith defense" to civil liability is also needed to protect financial institutions who cooperate with Federal law enforcement in good faith within the confines of the RFPA.

In addition to the Administration's money laundering bill, there is another legislative initiative fully supported by the Administration on which I urge early and favorable action. This is S. 2306 introduced last week by Senator D'Amato.

This bill would prohibit structuring of currency transactions to avoid the $10,000 currency transaction reporting requirement. Structuring includes the well-known practice of "smurfing." Recent decisions in three Federal Circuits have made it clear that the current law is inadequate to sustain consistent prosecutions for structuring. The proposal would make a person who structures transactions to avoid the currency reporting requirements, or who causes a financial institution not to file a required report, subject to the criminal and civil sanctions of the Bank Secrecy Act.

The bill also provides seizure and forfeiture authority for currency related to a domestic (CTR) reporting violation or interest in property traceable to the currency. The forfeiture would not affect bona fide purchasers who took the currency or property without notice of a reporting violation. Currently, there is forfeiture authority only for monetary instruments underlying violations of the reporting requirements for internationally transported monetary instruments. The forfeiture would not be applicable to domestic financial institutions examined by a federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission.

There have been a number of past cases in which the absence of forfeiture authority allowed the proceeds of criminal enterprise to allude the grasp of the government.

Treasury must respectfully take issue with one proposal in S. 1385. This bill would require a financial institution to submit its list of customers exempt from the requirements of the Bank Secrecy Act to Treasury every quarter. Treasury would then have to review and approve or revoke the list within 90 days. The financial institution would consider the exempt list approved, unless notified otherwise by Treasury within the 90-day period.

Under the current regulations (31 C.F.R. § 103.22(b)), a bank may exempt from reporting certain cash deposits and withdrawals

of accounts of retail businesses in amounts commensurate with the lawful, customary conduct of such a business. The bank has a continuing duty to monitor the qualifications for such exemptions. It would be unwise, in our view, to shift the burden of monitoring the eligibility of bank customers for exemptions away from the bank. The bank is in the best position to know its customers, the normal course of their business operations, and changes in their status. Moreover, the provision would take an army of Treasury employees to enforce. The provision is accordingly inefficient, overly burdensome and unnecessary.

We are exploring other solutions to past problems with banks' improper placement of customers on exempt lists. For instance, we are considering a regulation under which a customer would have to attest to information contained in a bank's request for a special exemption. Under S. 2306, a customer who causes a financial institution to put it on the exempt list on the basis of false information provided by the customer would be liable under the Bank Secrecy Act.

We are also planning to work with the banking industry to educate further banks on exemption procedures. We are considering issuing a Treasury publication on the subject that would be available to all financial institutions.

This concludes my prepared remarks. I will be happy to answer any questions the Committee may have.

Senator D'AMATO. Before we hear from Mr. Bruh, Senator Cranston has a statement that I believe he would like to make for the record.

OPENING STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. Thank you very much, Mr. Chairman. I appreciate your courtesy in giving me the opportunity at this time and I apologize to the witnesses and I thank you for this opportunity for me to speak briefly. I have to be at two other committees, so I have a scheduling problem this morning.

I just wanted to say briefly this. The Federal Bureau of Investigation Director William Webster said in 1983, "that drug trafficking was America's No. 1 crime problem," and almost 3 years later nothing has changed that assessment. In fact, the illegal drug business is booming in America.

California drug problems are more severe and probably more complex than anywhere else in the United States with the possible exception of Florida. With its homemade drug laboratories and secluded wildernesses, California has become the industrial capital of America's illegal narcotics manufacturers. California's ports and border with Mexico make it one of the largest entry points for foreign drugs into our country.

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The lifeblood of the illegal narcotics industry is money—over $100 billion a year in U.S. drug sales. If DEA agents confiscate 100 pounds of cocaine from a van entering San Diego or a motorboat in Miami, those drugs can be replaced within weeks by the fertile fields of Colombia, Burma, Peru, and other countries. But if we can block the huge transactions of cash between American dealers and foreign banks the drug flow will not be able to continue.

Additionally, some reform of the Bank Secrecy Act and increased penalties under the act will make it clear that the Government is serious about clearing up this dirty game of money laundering.

I commend my colleague, Senator D'Amato, for his bills, S. 571 and S. 2306 and for calling this hearing to examine weaknesses in the current legal structure that may enable money launderers to evade detection or prosecution while using the banking system in that process.

However, we do need to keep in mind the Right to Financial Privacy Act. I was its principal author and we must be sure we do not trample on the rights of innocent individuals as we seek to make it impossible for drug dealers to clean their money through the banking system undetected. Increasing penalties for bank officials who knowingly violate the Bank Secrecy Act's reporting requirements and providing the Treasury Department with simplified subpoena powers to review money transfers from American banks to foreign banks are certainly steps in the right direction.

Thank you very much, Mr. Chairman.

Senator D'AMATO. Thank you, Senator. Please proceed Mr. Bruh.

STATEMENT OF BRIAN BRUH, DIRECTOR, OFFICE OF CRIMINAL INVESTIGATIONS, INTERNAL REVENUE SERVICE

Mr. BRUH. Thank you.

Senator, thank you for the opportunity to testify concerning the Internal Revenue Service's efforts to use the laws within its jurisdiction to attack money laundering. Mr. Keating said a little while ago why Mr. Wassenaar, our Assistant Commissioner, could not come here today. I would just like to add one thing. He wanted to be here very badly, sir. He supports what you're trying to do very much.

Criminal investigation has responsibility for the investigation of alleged violations of the Internal Revenue Service's laws and related offenses, certain aspects of title 31, the Bank Secrecy Act, and the protection of Service personnel and property in appropriate situations.

IRS INVOLVEMENT

We at the Internal Revenue Service believe that devoting substantial resources to the investigation of money laundering is appropriate not only because of the significant amount of revenue that could be collected but also because the service's tax administration expertise can be focused on the motive for drug trafficking, the huge illegal profits involved. In order to stem the flow of drugs, we must attack the movement of funds generated by this illegal activity.

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Senator, if you would like, I am prepared to speak of some of the issues that Mr. Keating spoke of before which is examples of cases and what we are doing.

Senator D'AMATO. I think that would be excellent.

Mr. BRUH. Since October 1981, the IRS has initiated 873 criminal investigations involving title 31 violations of law. Our current inventory is over 300 investigations. As you can see in chart I, in 1982, we had 126 investigations, approximately half, that we could show are related to narcotics trafficking, and each year as the number increased a similar percentage related to narcotics trafficking.

While in 1985 we end up with 338 investigations that we initiated, with 162 tied into narcotics trafficking cases. Over 60 of the current investigations are against financial institutions. Additionaly, in 1985, we recommended prosecution against 317 individuals or entities which include financial institutions. We convicted 31 banks and financial institutions since 1981, 8 of them in 1985 alone. There were nearly $4 million in fines assessed against the banks, with $1.24 million being the largest against the Bank of New England which recently was found guilty of violating title 31. Thirty-four officers or employees of financial institutions were convicted since October 1984.

Chart II shows the total number of currency transaction reports that we have been receiving. As you are aware, any financial institution that has a currency transaction in excess of $10,000 within a 24-hour period must file a CTR within 15 days. This chart does not include any CTR's filed by casinos.

In 1975, the little dot you could barely see on the chart reflects that there were 3,418 CTR's filed for the year. In 1980, it jumps to 241,000; 1981, 352,000; and then we go to 1984 where it's 707,000. In February 1985, the Bank of Boston is prosecuted successfully for failing to file a large number of CTR's. Although the graph shows a line bar for 1985 that's only slightly larger than the one depicted for 1984 year, it would be off the poster if drawn to scale. That's why there's that little squiggly line up near the top. In 1985, over 1.8 million CTR's were filed and for the year 1986, we're running at approximately a 3.2 million CTR rate.

Chart III, the one to your right, shows the CTR's filed by months for the year 1985. As you can see, early in the year, in February 1985, there was some 63,000 and later on for December, we were up to 254,000 for that month. In fact, that increasing pace is continuing and actually accelerating. Of the most recent months we've hit as high as 280,000 a month.

During the month of April we sent to the Treasury Enforcement Communications System [TECS], a system which holds the data some 769,000 CTR's which can be retrieved by law enforcement agencies. This number exceeded the total sent to TECS for the previous 6 months. As Mr. Keating had said earlier, we established a unit in Detroit to process the CTR's.

[Charts I through III follow:]

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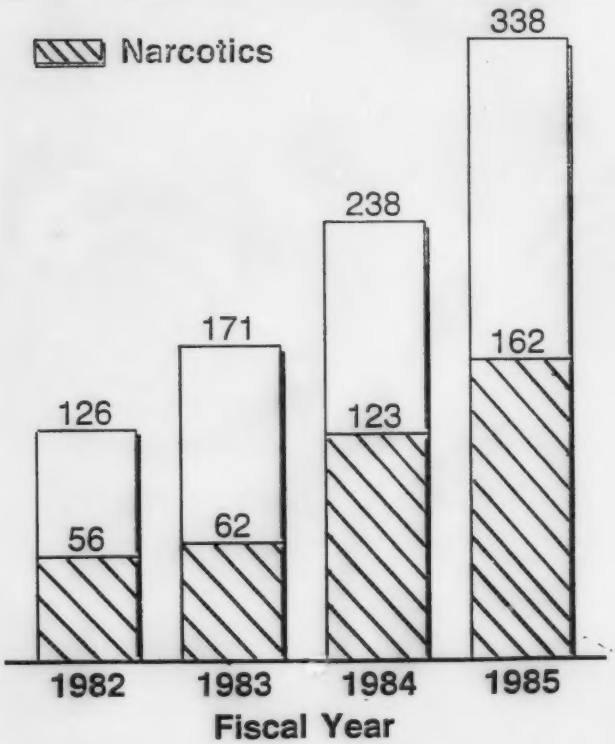
(CHART I)

Title 31 Investigations



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(CHART II)

Total Currency Transaction Reports Form 4789

1975–1985

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35

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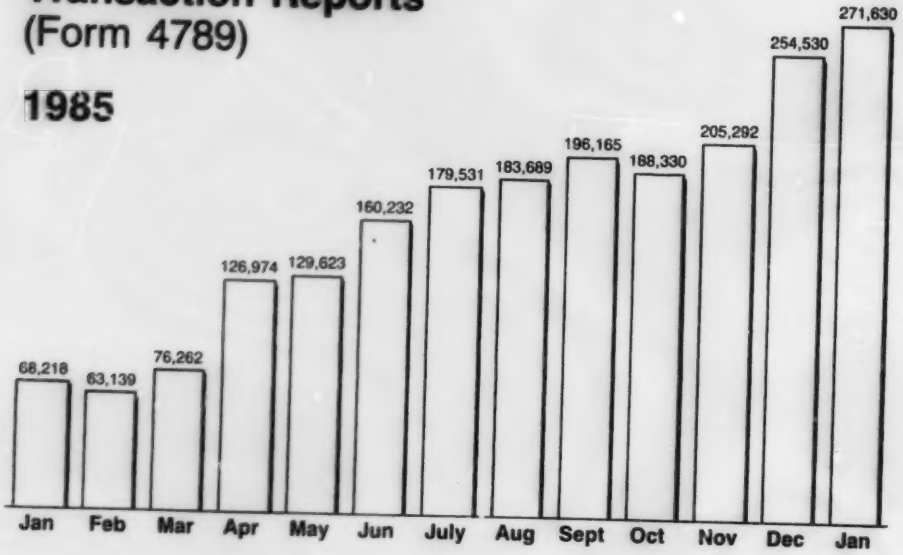
(CHART III)

Total Currency Transaction Reports (Form 4789)

1985



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Senator D'AMATO. Mr. Bruh, could I interrupt just for a moment to discuss the relevance of CTR findings?

You indicated that you sent 769,000 CTR's during the month of April to——

Mr. BRUH. To U.S. Customs Service which maintains the Treasury Enforcement Communications System, commonly called TECS.

Senator D'AMATO. Because these might be potential, you had a feeling these might establish potential violations?

Mr. BRUH. No; they maintain—it's a computer type of system, which——

Senator D'AMATO. Can it identify a profile?

Mr. BRUH. Yes, by profile. They keep various law enforcement data in it.

Senator D'AMATO. So you make an initial decision that this information would be useful on that profile because a certain pattern exists that might indicate some kind of criminal conduct?

Mr. BRUH. Let me explain it a little bit better.

Senator D'AMATO. Please continue.

Mr. BRUH. We send virtually every CTR to that system so it could be retrievable. Currently in Detroit we cannot retrieve the CTR data, we can just process it onto tape. Sending it into the TECS makes it easily retrievable by us or Customs or other agencies should an intelligence analysis be desired. It could also be used to match it against suspected people involved in narcotics trafficking.

Senator D'AMATO. OK.

BOTERO CASE

Mr. BRUH. I would like to talk about three actual case examples, sir. One involves the *Botero* case which was a Florida investigation. Botero laundered approximately $57 million through a branch of a Fort Lauderdale bank during an 8 to 10 month period. The currency allegedly represented payments from domestic narcotics organizations to Colombian source suppliers. Three officers of the domestic branch assisted in the scheme for which they received one-half to 1 percent of the money laundered.

Botero was a prominent Colombian businessman and he was the first Colombian national ordered extradited to the United States by the Supreme Court of Colombia. He was convicted in 1985 along with the bank officers and he was sentenced to 30 years in prison.

I would like to show on chart 1 the flow of funds. Up at the top you can see the black dot where it says "Botero, $56,692,206." Money was deposited by Botero into five separate bank accounts which had El Salvadoran origination. Now if I could direct your attention to the left side of the chart as it faces you, you can see that, approximately $39 million, or some $38,800,000 was wire transferred out of the country through a series of schemes. They wire transferred the moneys from the Landmark Bank in Fort Lauderdale to a correspondent bank, the Pan American Bank, in Miami. In addition to that, the corrupt bank officials issued a number of cashier's checks which went into the four accounts in the Pan American Bank in Miami. These four accounts represented accounts of banks in Colombia. From those four accounts it was wire

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transferred out of the country into various accounts in banks in Colombia.

The right side of the chart reflects that some $600,000 was transferred in similar ways into domestic accounts. We have no evidence that any bank officers did anything wrong regarding those accounts.

Down at the bottom part of the chart, where the arrow points down, we show some $10.5 million going to other individuals and entities which we cannot prove are Botero controlled. He did control, however, the almost $39 million that went out of the country to Colombia and the almost $600,000 in the domestic accounts.

This left $7 million, Senator, which we cannot account for right now. Again the moneys reflect the activity during just one 8 to 10 month period for this organization.

[The following charts were subsequently submitted for the record:]

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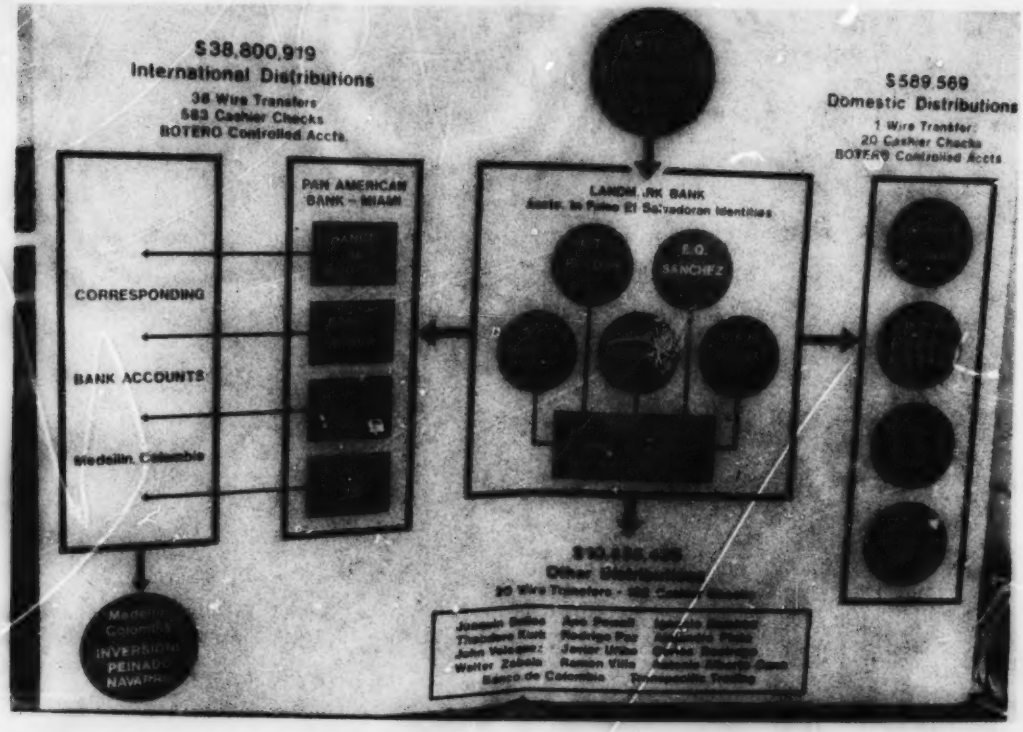
CHART 1



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Senator D'AMATO. You're saying that $57 million was laundered in this way during a 8 to 10 month period?

Mr. BRUH. Yes.

Senator D'AMATO. This is one segment of this money laundering operation? When we talk about billions of dollars being laundered, that is not an exaggeration?

Mr. BRUH. No, sir. In fact, the $57 million is only some unknown fraction of the total amount because this is only the money going to the foreign country after U.S. narcotics traffickers have already taken their cut. This is the proceeds that Botero got. It has nothing to do with all the money made on the lower end by the individuals selling the drugs.

BERRERA CASE

Chart 2 involves another narcotics trafficking organization entitled Berrera. Berrera and his organization hired smurfs, as Mr. Keating referred to before, individuals who went around from financial institution to financial institution generally getting some monetary instrument for an amount of money less than $10,000 so as to avoid the CTR filing requirement.

The smurfs traveled to banks all over the United States. No CTR's were filed because the currency transactions were all less than $10,000. The cashier's checks and money orders were in turn deposited into various bank accounts in Miami from which the funds were wire transferred out of the country. No CTR's filed because no over $10,000 amounts of currency. We documented $7 million of funds that went to Panama. Chart 2 on your left simply portrays a bag of narcotics money with figures representing the smurfs under it. All part of the Berrera organization. These smurfs went to numerous cities around the country which are represented on the right side of the chart. The only documented proof that money went out of the country is the funds going to Panama. However, we do have some evidence that money also went to Switzerland as well as Colombia.

The third case that I would like to talk about—by the way, let me say, sir, if we knew that these moneys were being transferred out of the country or these moneys existed and we had the power given to us by your bill, we would have been able to seize all those moneys.

Senator D'AMATO. You would have?

Mr. BRUH. Yes, sir.

Senator D'AMATO. How would the bills which are before the committee today have made a difference in the cases you described?

Mr. BRUH. The difference would have been in any moneys that we've known about—I'm not intimate enough with the details to assure you that all $57 million could have been seized or the $7 million that we know of in the second situation, but I can tell you that any money before it left the country could have been seized had we known.

Senator D'AMATO. So a significant amount of the proceeds that were sent out of the country in both the cases of Botero and the second case which involved $7 million could have been seized under this bill?

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Mr. BRUH. Yes, sir, and forfeited.

Senator D'AMATO. And forfeited?

Mr. BRUH. Right. And any money that they were able to get away with, we could have gone after them civilly because of the provisions in your bill. It would have been dramatically helpful.

Senator D'AMATO. In your opinion, then, will this bill have a dramatic increase in the ability of law enforcement officials to interdict, intercept, and seize these illegally earned dollars?

Mr. BRUH. Yes, sir. And I do not want to downplay the importance of your bill with regard to structuring of transactions. That's very important to us too. That kind of capability allows us to make cases that we wouldn't ordinarily make, seize illegal proceeds that we would not ordinarily get. And usually those kinds of cases turn into other kinds of cases because then we're able to expand our investigation.

BANK OF NEW ENGLAND CASE

The third case involves the Bank of New England and is a different kind of case. The utility of the new legislation, your legislation, sir, is illustrated by our experience in the *Bank of New England* case. Both the bank and the money launderer were tried together under existing law for deliberately failing to file CTR's. The jury heard evidence that the customer, James B. McDonough, a convicted bookmaker and loan shark withdrew a total of $817,200 in currency from the Bank of New England between the months of May 1983 and July 1984. In each of 36 instances in which McDonough obtained cash usually between $20,000 to $40,000, he did so by writing and then simultaneously cashing multiple checks drawn on the same account. No one check exceeded $10,000 but the aggregate amount of the checks always exceeded $10,000.

The transactions were deliberately structured for the purpose of evading the CTR reporting requirements and McDonough made gifts to the tellers who through either coincidence or design did not file a CTR.

The Bank of New England was convicted for its role in the CTR violations and was fined $1.24 million, the largest criminal fine ever imposed to date for violation of the Bank Secrecy Act.

McDonough, who was charged with inducing and causing the bank to fail to file CTR's, was acquitted. The acquittal was caused by the fact that the current law imposes all of the CTR filing obligations on the financial institution. Customers of financial institutions, however plainly involved in illicit activities, have virtually no duties under the current Bank Secrecy Act. We do not mean to imply that the Bank of New England was somehow an innocent victim here. The bank willfully failed to file CTR's and they should pay a price for accommodating the money launderer. However, the money launderer who may be equally and more culpable should not be allowed to escape conviction.

The new legislation would make McDonough's acts of causing the financial institution to fail to file CTR's criminal and civil violations of the Bank Secrecy Act. Moreover, all the money laundered by Mr. McDonough which represented the proceeds of the so-

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phisticated illegal gambling operation would be subject to seizure and forfeiture under the new law.

Senator D'AMATO. My bill sounds better all the time.

Mr. BRUH. It certainly does, sir.

In conclusion, we heartily support the Bank Secrecy Act Amendments of 1986, S. 2306. We believe that forfeiture authority will be a useful and powerful new weapon in our battle against money laundering, tax evasion, narcotics trafficking, and other illegal activities. We will also be happy to see money launderers bear direct responsibility under the Bank Secrecy Act for their flagrant schemes to prevent financial institutions from filing CTR's.

[The complete prepared statement of Mr. Wassenaar follows:]

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STATEMENT OF
RICHARD C. HASSENAAR
ASSISTANT COMMISSIONER
(CRIMINAL INVESTIGATION)
INTERNAL REVENUE SERVICE
BEFORE THE
SUBCOMMITTEE ON SECURITIES
OF THE
SENATE COMMITTEE ON BANKING,
HOUSING AND URBAN AFFAIRS
MAY 1, 1986

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Introduction

Thank you for the opportunity to testify concerning the Internal Revenue Service efforts to use the laws within its jurisdiction to attack money laundering.

As the Assistant Commissioner (Criminal Investigation) for the Internal Revenue Service (IRS), I am the principal advisor to the Commissioner in the areas of planning, coordinating and evaluating IRS criminal investigative activity. Criminal Investigation has responsibility for the investigation of alleged violations of the Internal Revenue Laws and related offenses, certain aspects of Title 31 USC (Bank Secrecy Act) and the protection of Service personnel and property in appropriate situations.

We at the Internal Revenue Service believe that devoting substantial resources to the investigation of money laundering is appropriate not only because of the significant amount of revenue that can be collected but also because the Service's tax administration expertise can be focused on the motive for drug trafficking -- the huge illegal profits involved. In order to stem the flow of drugs we must attack the movement of funds generated by this illegal activity.

Money laundering is big business. It is also a business with varied clientele: drug dealers saddled with millions of dollars in cash per week; ostensibly legitimate businessmen trying to evade taxes; giant corporations setting up slush funds for bribes and kickbacks; and ordinary people trying to hide their assets.

We make every effort to investigate and prosecute those guilty of tax crimes. But when that is coupled with other, perhaps more sinister crimes against society, there is a clear-cut obligation on our part to combine our resources with those of other agencies to identify and prosecute the perpetrators.

Bank Secrecy Act

I would like to begin with a brief review of the Bank Secrecy Act in order to place our activities in perspective.

As a result of concerns expressed by law enforcement over the laundering of illegally generated proceeds through domestic banks and foreign tax havens, Congress passed the Bank Secrecy Act in 1970 (P.L. 91-508). Legislative history of the Act shows that Congress explicitly recognized the value of the Act to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

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The Act provides four basic tools to identify those who attempt to conceal their participation in crimes where substantial amounts of currency are generated, and to provide a basis to prosecute those who fail to comply with its requirements.

The four basic tools provide:

- A paper trail of records that must be maintained by financial institutions for up to 5 years. These records include copies of checks, drafts, money orders, and customer identification information.

- A Currency Transaction Report (CTR) that must be filed by banks and other financial institutions whenever a currency transaction over $10,000 occurs.

- A Currency or Monetary Instruments Report (CMIR) whenever currency or monetary instruments over $10,000 are taken into or out of the U.S. Offenses relating to the transportation of currency across U.S. borders are investigated by U.S. Customs.

- A Foreign Bank Account Report (FBAR) is required whenever a person has a financial interest in or signature authority over a foreign financial account in excess of $10,000 in value.

In addition, recent regulatory amendments added additional reporting requirements:

- Casinos with gross annual gaming revenue over $1,000,000 are added to the list of financial institutions that must file CTRs for currency transactions over $10,000.

- The Secretary of the Treasury may require certain financial institutions to report transactions with foreign financial agencies. These transactions include wire transfers, checks or drafts, loans, commercial paper, stocks, bonds, and certificates of deposit.

There are both civil and criminal penalties associated with violations of the Bank Secrecy Act. Civil violations can result in penalties of up to $10,000 per violation. Criminal penalties can result in a maximum prison term of up to 5 years and a fine of up to $250,000. When the violation is committed in furtherance of the commission of any other violation of Federal law, or is committed as part of a pattern of illegal activity involving transactions exceeding $100,000 in any 12-month period, then the maximum fine is increased to $500,000.

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The IRS has the responsibility to conduct Bank Secrecy Act criminal investigations of all banks and other financial institutions defined in Title 31. The IRS Examination function also conducts civil compliance examinations of secondary financial institutions. Secondary financial institutions include, but are not limited to, non-regulated banks, casinos, and currency exchange houses.

Enforcement Efforts and Increased Compliance

The IRS has made substantial progress in its enforcement efforts. Since October 1981, we have initiated criminal investigations of more than 873 money laundering specialists, financial institutions, and their employees.

As of January 31, 1986, Criminal Investigation had over 300 Bank Secrecy Act investigations currently in open inventory. Over 60 of these are investigations of financial institutions. During 1985, we recommended prosecution of 317 cases involving money laundering.

We have presented evidence leading to the conviction of a total of 31 banks and financial institutions since 1981, with 8 convictions in the past year alone. These banks have been criminally fined nearly $4,000,000. In addition, we have presented evidence leading to the conviction of 34 officers or employees of financial institutions since 1984.

During recent months there has been a tremendous increase in the number of CTRs filed. The Bank of Boston pleaded guilty to Bank Secrecy Act violations and was sentenced in February 1985. After this sentencing, the national rate of CTR filings rose steadily from less than 70,000 a month to a high of 254,530 for December 1985, a fourfold increase. For 1985, the number of CTRs filed totaled 1,832,000 up from 700,000 CTRs in 1984.

In January 1986, the number of CTRs filed totaled 271,630. Based on this filing rate we anticipate that more than 3,000,000 CTRs will be filed during calendar year 1986.

Proposed Legislation: "The Bank Secrecy Act Amendments of 1986" (S. 2306)

The bill (S. 2306) introduced by Senator D'Amato on April 15, 1986, contains three basic amendments to the Bank Secrecy Act (BSA). First, a provision is added which will permit the seizure and forfeiture of currency (or property traceable to such currency) involved in a Currency Transaction Report (CTR) violation (new subsection (d) of Section 5317). Currently, the Bank Secrecy Act only permits forfeiture of monetary instruments involved in a Currency and Monetary Instrument Report (CMIR) violation. (CMIRs must be filed with U.S. Customs when a person transports monetary instruments of more than $10,000 into or out of the country.)

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Second, a new civil penalty is added as a fall back provision for those instances where we cannot identify and forfeit the property that was actually involved in the CTR violation. The maximum amount of the new civil penalty is equal to the difference between the amount of currency involved in the CTR violation and the amount of property seized and forfeited (new paragraph (4) of Section 5321(a)). Currently, the Bank Secrecy Act only imposes civil penalties upon financial institutions or their partners, directors, officers or employees, and the penalty cannot exceed $10,000 per violation.

Third, the proposed legislation imposes civil and criminal penalties against a person who causes or attempts to cause a financial institution to either fail to file a CTR or to file a false CTR (amended 5313(a)). The new bill also prohibits money launderers from structuring a transaction for the purpose of evading the CTR reporting requirements (amended Section 5313(a)). Currently, virtually all of the Bank Secrecy Act obligations are imposed upon the financial institution.

The proposed amendments function in harmony with one another. When a customer engages in the prohibited conduct set forth in amended Section 5313(a) (i.e., causes an institution to fail to file a CTR), that triggers the forfeiture or civil penalty

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provisions contained in Sections 5317(d) and Section 5321(a)(4), respectively. If the IRS cannot forfeit all of the property involved in the violation, then the balance may be collected through the new civil penalty. In either case the money launderer runs the risk of losing an amount equal to all of the money that was laundered.

The new legislative prohibitions, which penalize a customer for causing a CTR to not be filed, also address a problem independent of the new forfeiture and civil penalty provisions. In the 1st and 9th Judicial Circuits, we have been losing criminal cases because the customer has been found not to have any legally enforceable duties under the Bank Secrecy Act. See U.S. v. Anzalone, 766 F.2d 676 (1st Cir. 1985) reh. den. and U.S. v. Varbel, No. 84-1231 et al, slip op. (9th Cir., Jan. 10, 1986). The 9th Circuit Court of Appeals in U.S. v. Varbel was faced with the district court's conviction of a customer who took $50,000 of currency and purchased six cashier's checks in amounts less than $10,000 at six different banks on 3 different days. Clearly, the transactions were structured to prevent a CTR from being filed. The appellate court pointed out the following:

"the Secretary's implementing regulations require only financial institutions to file CTRs and then, only when they participate in currency transactions involving more than $10,000. ...The Secretary could have required participants other than financial institutions to file a report; however, 31 CFR Section 103.22 limits the reporting requirement to financial institutions only. ...We conclude that the reporting act and its regulations did not impose a duty on appellants to inform the banks involved of the nature of their currency transactions. We believe that the application of criminal sanctions against appellants here would violate due process." (emphasis supplied)

The 11th Circuit in U.S. v. Denepark, No. 85-3554, slip op. (11th Cir., Jan. 16, 1986) reversed the conviction of a bank customer for a slightly different reason. The bank customer had split up $135,000 of currency into increments of less than $10,000 and purchased 14 cashier's checks at 14 different banks on the same day. The appellate court reasoned that "there was no transaction in a financial institution which would require any such institution to file a CTR". Therefore, the 11th Circuit concluded that a customer could not to be prosecuted for causing the financial institution to fail to perform an act (filing a CTR) which the financial institution had no legal obligation to perform.

The proposed legislation corrects these problems by making the act of structuring, for the purpose of evading the CTR reporting requirements, a crime. Rather than focusing upon the defendant's conduct after the currency is broken into increments, and after the CTR reporting requirements have been successfully evaded, the proposed legislation shifts the focus back to the point in time when a given amount of currency is structured for the purpose of evading the CTR reporting requirements. The Government will no longer be forced to prove that a transaction actually occurred in a particular financial institution which would have required the institution to file a CTR, if the institution were aware of the transaction (See e.g. Denepark). Rather the Government must prove that the customer structured a transaction for the purpose of preventing a CTR from being filed.

Hypothetical Examples

The application and interaction of the proposed statutory provisions can be understood with a few hypothetical examples:

Example 1 - Assume that a money launderer possesses $160,000 in currency, representing illegal drug profits, and he wishes to transfer the funds to narcotics suppliers in Colombia. The launderer travels to 18 different banks on the same day and purchases 18 cashier's checks, each for less than $10,000,

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for the purpose of evading the CTR reporting requirements. He then deposits all of the cashier's checks into a domestic bank account in the name of a fictitious foreign entity from which the funds can be wired to Colombia. Because the money launderer has structured the transaction for the purpose of evading the reporting requirements, he has violated Section 5313(a) as amended by the bill. As a consequence, the currency (and any property traceable to the currency involved in the CTR violation) may be seized and forfeited by the Internal Revenue Service. Depending upon the timing of the seizure, the IRS could either seize the cashier's checks in the launderer's possession, or wait and seize the amount deposited with the domestic financial institution.

If we assume that before the seizure the launderer had deposited the cashier's checks into the domestic financial institution, and that $60,000 of the money had already been wire transferred offshore (and beyond the reach of the

IRS), then only $100,000 could be seized from the domestic account. However, the launderer could be civilly fined an additional $60,000, representing the difference between the total amount of currency involved in the CTR violations ($160,000) and the actual amount forfeited ($100,000). This illustrates how the proposed civil penalty under Section 5321(a)(4) would complement the proposed forfeiture authority.

Example 2- The same results discussed in Example 1 would occur if the money launderer deposited all of the currency ($160,000) at one time into the domestic financial institution and used false identification thereby causing the financial institution to file a false CTR. Moreover, if we seized the money on deposit before the bank was required to file the CTR and in fact before the incorrect CTR was filed, (CTR due 15 days from date of deposit), forfeiture would still be permissible because the money launderer attempted to prevent the bank from filing a correct CTR. The new attempt provision is contained in the proposed amendment to Section 5313(a).

Example 3 - If the money launderer who deposits all of the $160,000 of currency at one time causes the bank to not file a CTR by bribing a bank official, then the property involved in the CTR violation could be seized in the same manner as that discussed in Example 1 above.

If the money is wire transferred out of the bank before the funds can be seized, the IRS may not seize the bank's assets because banks are domestic financial institutions examined by a federal bank supervisory agency and thus are exempt from the seizure and forfeiture provisions as well as the new civil penalty provision, even if a culpable bank official is involved. We believe that the existing civil and criminal penalties are a sufficient deterrent to regulated banks (and financial institutions regulated by the Securities and Exchange Commission).

Safeguards

In recognition of the fact that forfeiture is a powerful civil remedy, the proposed bill contains a number of safeguards designed to protect innocent parties. The first safeguard against improper forfeiture is inherent in the existing IRS forfeiture procedures. Existing IRS Title 26 forfeiture procedures will be

used to accomplish Title 31 CTR forfeitures. Seizures will normally be reviewed by legal counsel before they are made, and the vast majority of seizures will be made simultaneously with the execution of a search warrant obtained from a United States magistrate after a review of the circumstances to determine if there is probable cause. Second, property shall not be forfeited if the owner can establish that he is a bona fide buyer for value who took without notice of the CTR violation (proposed amendment to Section 5317(d)). Third, property shall not be forfeited if the owner can establish that the violation or attempted violation was not willful.

Actual Case Examples

Botero

In January 1981, several Colombian nationals (known collectively as the Botero Organization) and U.S. citizens were charged with attempting to launder $57,000,000 in U.S. currency through the branch of a Fort Lauderdale bank in an 8-month period. It was alleged that this currency represented payments from domestic narcotics organizations to Colombian source suppliers for cocaine and marijuana smuggled into the United States and distributed through domestic trafficking organizations. The ultimate street value of the drugs was over half a billion dollars. While this $57,000,000 represents the wholesalers receipts, it includes none of the profits reaped by the domestic

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The Botero Organization enlisted the assistance of three bank officers at a small branch of a major Florida bank. Being paid a cash fee of 0.5 to 1.0% of the monies to be laundered, the officers opened numerous bank accounts in fictitious names with fictitious identification. The idea was to accept the cash deposits, run the cash through the bank accounts and file false currency transaction reports. The funds would then be wire transferred from the numerous accounts at the primary bank to a correspondent account of a foreign bank in Miami. From this second account the funds would be wire transferred offshore and distributed to other accounts in a foreign country. The U.S. dollars would then be available for a variety of uses, including sale on the black market for Colombian pesos or simply to secure wealth in U.S. dollar denominated instruments.

The currency deposited into this small branch bank in Fort Lauderdale was a contributing factor to the enormous surplus of currency at the Miami branch of the Federal Reserve. During the late 1970's this surplus in the amount of currency from Southern Florida financial institutions led us to believe that lucrative criminal activities were the source of these funds.

After the indictments in this case were returned, Herman Botero, a prominent Colombian businessman and owner of the national soccer team, fled the U.S. Botero became the first Colombian national ordered extradited to the United States by the Supreme Court of Colombia. He was convicted in 1935 and sentenced to serve 30 years in prison.

Although Botero and his associates were successfully prosecuted, most of the $57 million was transferred out of the country and the remainder distributed throughout the United States. If we had the authority to seize property traceable to a CTR violation we could have conceivably seized and forfeited the entire $57 million before it was disbursed and transferred, in large part, out of the country. If any of the $57 million could not have been reached for seizure, the new civil penalty could have been collected from Botero's other assets for that amount.

Barrera Indictment

The indictment of Alberto Barrera and 15 co-defendants for a major drug money laundering operation in South Florida, reflects a typical laundering scheme, and illustrates the potential utility of forfeiture power for CTR violations. Ten of the defendants were convicted, with jail sentences ranging from six months to four years. The average sentence was two years. Barrera and four others fled before trial and are currently fugitives.

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Barrera and his organization received large amounts of cash and delivered portions of the cash to associates (smurfs). These smurfs, in turn, purchased checks and money orders from numerous banks in various cities across the United States. These purchases were made in cash and each individual transaction was under $10,000, thus avoiding the reporting requirements of the Bank Secrecy Act. The cashier's checks and money orders were then transported to Miami and deposited to various bank accounts. Since CTRs are required only for currency transactions, the deposit of hundreds of thousands of dollars of these negotiable instruments in Miami again avoided the reporting requirements.

The affidavits filed with the court document currency exchanges in excess of $7 million. For example, during one 9-day period, April 7 to April 15, 1984, the receipt of $3,100,000 and disbursement of over $4,000,000 were recorded. The affidavits indicate that cashier's checks and money orders were purchased from banks in Atlanta, Georgia; Phoenix, Arizona; Denver, Colorado; Omaha and Lincoln, Nebraska; Portland, Oregon; San Jose and Palo Alto, California as well as numerous cities in Florida. All these cashier's checks and money orders were deposited in Miami banks for the accounts of foreign banks with branches located in Panama.

The new forfeiture penalty would have permitted us to seize the currency before it left the country. Alternatively, if the currency had already left the country at the time of the seizure, a civil penalty could have been imposed against Barrera and his co-defendants for $7,000,000.

Denemark Case

As mentioned above, the District Court's conviction of Douglas A. Denemark was reversed on the grounds that Denemark could not be prosecuted for causing the financial institution to fail to perform an act (filing a CTR) which the financial institution had no legal obligation to perform.

In June 1983 defendant Denemark decided to purchase a home in Tampa, Florida with $155,000 of currency. On the closing date for the sale of the house, Denemark arrived with a briefcase of currency; however, the title company refused to accept the money and advised him that a certified check would be required to close the transaction. Denemark then left the closing and drove to a branch of the Barnett Bank to exchange the cash for a cashier's check. He was told at the bank, however, that all currency transactions in excess of $10,000 were required to be reported by the bank to the IRS on a standard CTR form. Enlightened by this

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information, Denemark then told the bank that he did not want the CTR filed and proceeded to leave the branch. He returned to the office of the title company and managed to exchange two piles of $9,900 in currency for two personal checks from individuals present in the title company office. These checks were then tendered to the title company as part of the purchase price.

Denemark then proceeded with the remaining $135,000 of currency, using different variations of his name, to purchase 14 cashier's checks at 14 different banks on that same day. He then took these checks to the title company to tender them for final payment on the house.

The appellate court in reversing his conviction, reasoned that "there was no transaction in a single financial institution which would require any such institution to file a CTR". The Bank Secrecy Act Amendments of 1986 (S. 2306) will change the result of Denemark because conduct such as this would constitute structuring of a currency transaction for the purpose of evading the CTR filing requirements. The Government will no longer need to prove (in the 11th Judicial Circuit) that there was a transaction in a single financial institution which would require such institution to file a CTR. Moreover, the property traceable to the currency transaction (the house) would be subject to forfeiture.

(Although the Government could not present admissible evidence of Denemark's ties to narcotics trafficking, the currency showed sufficient traces of narcotics to alert narcotics sniffing dogs.)

Bank of New England

The utility of the new legislation is illustrated by our experience in the Bank of New England case. Both the bank and the money launderer were tried together under existing law for deliberately failing to file CTRs. The jury heard evidence that the customer James V. McDonough, a convicted bookmaker and loan shark, withdrew a total $917,200 in currency from the Bank of New England between the months of May 1983 and July 1984. In each of 36 instances in which McDonough obtained cash (usually between $20,000 and $40,000), he did so by writing and then simultaneously cashing multiple checks drawn on the same account. No one check exceeded $10,000 but the aggregate amount of the checks always exceeded $10,000. The transactions were deliberately structured for the purpose of evading the CTR reporting requirements and McDonough made gifts to the tellers who, through either coincidence or design, did not file CTRs.

The Bank of New England was convicted for its role in the CTR violations, and was fined $1,240,000, the largest criminal fine ever imposed for Bank Secrecy Act violations. McDonough, who was charged with inducing and causing the bank to fail to file the CTRs, was acquitted. The acquittal was caused by the fact that current law imposes all of the CTR filing obligations on the financial institution. Customers of financial institutions, however plainly involved in illicit activities, have virtually no duties under the Bank Secrecy Act.

We do not mean to imply that the Bank of New England was somehow an innocent victim here. The bank willfully failed to file CTRs and they should pay a price for accommodating the money launderer. However, the money launderer, who may be equally or more culpable, should not be allowed to escape conviction.

The new legislation would make McDonough's acts of causing the financial institution to fail to file CTRs criminal and civil violations of the Bank Secrecy Act. Moreover, all of the money laundered by Mr. McDonough, which represented the proceeds of a sophisticated illegal gambling operation, would be subject to seizure and forfeiture under the new law.

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Gurary and Sternberg Complaint

A recent complaint filed in early April 1986 in the Southern District of New York, charges that Schnejer Salman Gurary and Mechum Sternberg during the six-year period from 1979 until 1985, used phony invoices to help more than 170 individuals and businesses evade perhaps $100 million dollars in income taxes. According to the complaint, Gurary and Sternberg set up at least 37 companies that purported to sell merchandise to businesses, located in New York, in the garment, diamond, shoe and plastics industries. Owners of these businesses in turn would deliver checks to the two men. Gurary and Sternberg allegedly would cash the checks, keep 5 to 15% as a "fee", and return the rest of the money to the business owners.

The business owners could benefit in two ways: they received cash that they could avoid reporting as income on their personal tax returns, and their businesses could deducted bogus purchases from Gurary and Sternberg as legitimate expenses to reduce their corporate tax liability. According to the complaint the 170 businesses that utilized this scheme include a publicly held corporation and a major retail chain. The publicly held corporation engaged in over $15,000,000 worth of transactions.

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One of the charges against the two alleged money launderers is that they acted as a "domestic financial institution" (under the Bank Secrecy Act) because they were in the business of dealing in currency. If the proposed legislation were in effect, all of the currency (and property traceable to such currency) involved in this money laundering scheme would be subject to seizure and forfeiture.

REGULATORY CHANGES

The problems discussed above regarding multiple transactions are also being addressed through regulatory changes. Treasury, with input from the IRS and the Department of Justice is preparing several changes. Customers will be required to complete a form for all currency purchases of monetary instruments over $3,000. The customer must acknowledge whether or not that transaction when combined with others on the same day, totals more than $10,000. The completed form is not filed with the IRS, but rather it will apprise the financial institution that the customer is or is not engaged in multiple transactions over $10,000 and will be retained by the institution as a record that a CTR was or was not required. The form will also serve as documentary evidence against a person who causes an institution to fail to file a CTR.

If the customer indicates that more than $10,000 has been transacted on a single day, then the financial institution has the duty to file a CTR. This change will inhibit the most commonly observed method of "smurfing" which involves purchases of monetary instruments in amounts less than $10,000 at different financial institutions on the same day which aggregate more than $10,000. (For example, consider the facts in both Varbel and Denaeas discussed above).

Senator D'AMATO. Thank you very much, Mr. Bruh. I can't think of an area that deserves more attention than our battle against the epidemic of drugs. Drug trafficking has been facilitated very directly as a result of the money laundering operations that have gone unabated for years and no small part of that has to do to the loopholes that exist in present legislation and the lack of penalities that can be imposed on those who engage in drug trafficking. The penalties seem so minimal compared to the illegal profits. Why not do it? If one is caught, the potential penalties compared to the certain profits are such as to encourage rather than deter people from engaging in this activity. Hence, the laws have become rather inadequate as a deterrant.

We are deeply appreciative of the Treasury's assistance to the committee in preparing this legislation and the help of IRS in coming forward today and testifying. I'm going to ask a number of questions and submit several more in writing. I know Senator Hecht also has some inquiries.

SUMMONS AUTHORITY

How will the summons authority increase law enforcement efforts in this area?

Mr. KEATING. Senator, as you indicated in your remarks and as I indicated in my prepared statement, we are subjected to some difficulty in the investigative process because of the absence of summons authority. We have discussed at some length the Right to Financial Privacy Act and the present law which permits banks to share information suggestive of a violation of rules or regulations or a statute, but oftentimes that information is not forthcoming because the institution is concerned about civil liability under the act.

We think that clarifying the Right to Financial Privacy Act to permit that bank to share adequate information when it comes to its attention in order for the Government to be able to proceed with the issuance of a summons or issuance of a grand jury subpoena would go a long way toward satisfying legitimate law enforcement needs.

Senator D'AMATO. Without tipping off the people who are undertaking the money laundering scheme or any other, isn't that correct?

Mr. KEATING. That's correct, sir.

Senator D'AMATO. Whereas if you get into the criminal side, there are often situations where that person may be advised of the existence of a criminal investigation and consequently even compromise the effectiveness of that investigation.

Mr. KEATING. That does occur, I can say with some experience. I formerly was a U.S. attorney and that has occurred in cases in which I've been involved with on occasion in grand jury matters.

But as indicated, Senator, these 3,000 institutions are not subjected to investigation by the Comptroller of the Currency, or the Federal Deposit Insurance Corporation or any other entity of Government. The IRS has responsibility for investigating title 26 violations for those institutions, but not title 31. So you have a hole there. It's either voluntary compliance, willingness on the part of

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the institution to step forward and unfortunately run the risk of a Right to Financial Privacy Act or nothing. We think a combination of what is proposed here today, clarification of the Right to Financial Privacy Act and summons authority to provide us an opportunity to legitimately investigate, will make our job far easier and be in the public interest.

Senator D'AMATO. Do you care to comment on the impact of money laundering operations on the collection of Federal taxes?

Mr. KEATING. Well, Mr. Bruh probably could go into that more graphically, but I might say, as the Senator is aware, when the Right to Financial Privacy Act was initially enacted, one of the reasons for the filing of cash transaction reports was to assist the Internal Revenue Service in its tax collection functions.

LOSS OF $100 BILLION IN INCOME TAXES

Senator D'AMATO. We're right now losing $100 billion a year, it's estimated I understand, in Federal income taxes that aren't being paid. Here we're called upon to reduce the deficit and get it down to $144 billion and yet we lose $100 billion—and I understand that Treasury has estimated that over the next 14 years, if this continues, that number is going to reach $400 billion a year. Now we want to balance the budget and it certainly seems a way to begin to undertake to reduce at least the deficit is to get better tax enforcement. And when people know that there's a good likelihood that they're going to be apprehended, particularly on criminal charges we may discourage people by keeping honest people honest.

Mr. KEATING. This is a tremendous growth industry, regrettably, for the future of this country. As you've indicated, Senator, and as Senator Dixon mentioned, the estimates are the drug bill of Americans exceeds $100 billion a year, money laundering some $90 billion a year, which is more money than all the public government purses expenditures on a per year basis in Central and South America. It's a tremendous quantity of cash and I think providing us these additional enforcement tools will not only go a long way toward getting people out of this business but also collecting those tax dollars that we so desperately need.

Senator D'AMATO. Interestingly, I've been given to believe that the American Bankers Association supports the provisions of S. 571 and S. 2306. I think that's been a great breakthrough. I commend them for their position. I look forward to working with the ABA in the enactment of both these bills.

Senator Hecht.

Senator HECHT. Thank you, Mr. Chairman.

Mr. Keating, in your testimony you mention revised regulations which now treat casinos as banks for the purpose of the Bank Secrecy Act. What has been the result of these changes?

Mr. KEATING. As you know, Senator, those regulations went into effect not too long ago. The information which has been solicited and which is being received as a result of the implementation of those regulations is being analyzed. Whether or not any criminal or civil cases will result, I'm not in a position to say at this time. But it is being studied and analyzed.

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Senator HECHT. Have the casinos complied fully?

Mr. KEATING. The information I have to date, Senator, is that the casinos have complied and cooperated.

Senator HECHT. And have they led to additional detection of money laundering in casinos?

Mr. KEATING. As I indicated in my first statement, Senator, that's a matter under review and investigation at this time.

Senator HECHT. So basically you have not had adequate time to fully assess the results of these regulatory changes?

Mr KEATING. That's my understanding, but perhaps Mr. Bruh could postscript that comment.

Mr. BRUH. Generally that is so, Senator, that we have not had adequate time. However, we do have some indications that there are some violations of the CTR filing requirements and we are conducting some investigations.

Senator HECHT. I would be happy to meet with either of you at any time on this. Thank you very much.

Thank you, Mr. Chairman.

CONVICTIONS OF 34 EMPLOYEES

Senator D'AMATO. I just have one other line of questioning I'd like to undertake. There was some talk of 34 employees who were convicted I think who worked for various institutions. In addition, I think you mentioned that some 4 million dollars' plus worth of fines have been levied.

I think the 4 million dollars' worth of fines were totally inadequate, that they should have been much higher, that financial institutions who engage in this kind of activity have a responsibility to pay the full measure and the full price.

Mr. BRUH. Sir, may I clarify one thing?

Senator D'AMATO. Certainly.

Mr. BRUH. The $4 million in fines strictly relate to criminal fines imposed by the court. The Treasury, under Mr. Keating, assert other type of penalties against the financial institutions.

Senator D'AMATO. Are they still liable then for additional penalties?

Mr. BRUH. Yes, they are, sir.

Senator D'AMATO. Could you tell us about the convictions? Do you have any information on that in terms of length of sentences or what kinds or what fines or what were the penalties imposed?

Mr. BRUH. They vary, Senator, from some light sentences to some very heavy sentences. We've had, for example, one CPA down in Florida who laundered a tremendous amount of money, over $1 billion per his own estimate.

Senator D'AMATO. One individual was responsible for laundering $1 billion?

Mr. BRUH. Yes, sir.

Senator D'AMATO. Let me ask you this. If these laws had been in place, would his detection have been easier?

Mr. BRUH. This was a different type of situation. I think possibly the structuring of transactions provision may have disclosed him earlier on. The way this money launderer operated was he literally put crates of money in a plane and would fly out of the country

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with it. Our agents, along with Customs agents, spotted him during the surveillance trying to leave the country on one of those flights. We stopped him. We searched the plane. We found several million dollars in crates. We got a search warrant for his office. We found 94 pounds of cocaine, counterfeit money, and weapons. We ultimately seized $6.5 million, but we couldn't seize it under the——

Senator D'AMATO. You could not seize the moneys at that time?

Mr. BRUH. No; Customs has the authority to seize under the requirements for individuals to fill currency monetary instrument reports. Although we had an individual who was trying to leave the country, we in IRS did not have the power because frankly we don't have your bill. Thankfully Customs was able to grab hold of the money and subsequent the court levied fines against this individual for $6.5 million. The Government ultimately was to keep the money. He was sentenced to 35 years in prison and is presently incarcerated.

Senator D'AMATO. We have many, many additional questions that we would like to ask but we do have two other panels. First of all, let me thank both of you for coming in for your presentation for the time that you have taken yourselves and the Department has taken. We're deeply appreciative and we will have some additional questions for the record. If you could answer them, we'd be very grateful.

Mr. KEATING. Thank you, Senator.

Senator D'AMATO. Thank you very much.

Our second panel, Deputy Assistant Attorney General, Department of Justice, James Knapp; and Brian A. Sun, assistant U.S. attorney from the central district of California. He's probably had more experience or as much as anyone else just in that district in the area of dealing with money laundering and drug enforcement, et cetera.

STATEMENT OF JAMES I.K. KNAPP, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. KNAPP. Thank you, Senator.

Mr. Chairman, I am pleased to have this opportunity to appear before you today and present the views of the Department of Justice on S. 2306, your proposed amendments to the Bank Secrecy Act, and S. 571, the Drug Money Seizure Act, as well as S. 572. The provisions of the latter two are contained within the much broader comprehensive money laundering bill, S. 1335, about which I'd like to also briefly speak.

Sitting here on my left is Mr. Brian Sun, an assistant U.S. attorney in the central district of California. After I've made some remarks about the legislation itself, Mr. Sun will speak about his personal experience prosecuting money laundering.

Sitting here on my right and available to answer your questions as well is Mr. Charles Saphos, formerly head of Operation Greenback in Miami, now presently Chief of the Narcotic and Dangerous Drug Section of the Criminal Division in the Department of Justice.

Senator D'AMATO. Wonderful.

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Mr. KNAPP. I have prepared a formal statement for the record. There are some technical mistakes in the testimony.

Senator D'AMATO. Why don't we do two things. No. 1, we'll take your statement as prepared in its entirety and you will make those revisions you deem necessary and we'll keep the record open for that purpose.

Mr. KNAPP. Thank you very much.

Senator D'AMATO. And then second, if you will touch on those highlights.

Mr. KNAPP. I will just read selected portions from the testimony.

JUSTICE DEPARTMENT WELCOMES LEGISLATION

Let me begin by saying that the Department welcomes and appreciates your legislation designed to stop the illegal flow and laundering of currency involved in the trafficking of narcotics and other criminal enterprises. As the committee knows, money laundering, the process by which one conceals the true source, origin, and ownership of illegal income, is a big business. It is only through the money laundering process that the tremendous sums of currency generated by drug trafficking can be concealed, disguised, and ultimately made to appear legitimate.

The first bill about which I wish to speak primarily is your bill S. 2306, which proposes several amendments to title 31 of the United States Code, the Bank Secrecy Act.

Section 1 proposes additions to 31 U.S.C. 5313(a). This is the provision of title 31 which requires the filing of currency transaction reports by domestic financial institutions on cash transactions which exceed $10,000. Section 1 of this proposed act addresses the problem of structured currency transactions—that is, currency transactions which are intentionally broken down into a series of smaller transactions, each under $10,000, for the purpose of evading the reporting requirements of the Bank Secrecy Act.

This process, commonly known as smurfing, is undertaken by individuals or groups of individuals who, intending to prevent banks from reporting their currency transactions, engage in a series of cash transactions each under $10,000 at different banks on different days or different banks on the same days or the same bank or its branches on different days. It is the purpose and intent of this process to transfer or move a much larger aggregate amount of currency through financial institutions while avoiding the reporting requirements.

Now, traditionally, the Departments of Justice and the Treasury have vigorously investigated and prosecuted persons under the Bank Secrecy Act for their involvement in these types of artifices. However, recent appellate court decisions—the *Anzalone* case in the 1st circuit involving the same bank on different days situation, the *Varbel* case in the 9th circuit involving a different bank situation on both the same and different days, and the *Denemark* case out of the 11th circuit involving a different bank and same day situation—have reversed convictions of persons who intentionally caused financial institutions to fail to file currency transaction reports by structuring currency transactions.

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In effect, these court decisions interpret the present law as to either not prohibit—in the case of some circuits—or, in the case of the 11th circuit, to only partially limit the structuring of currency transactions, even though it may be proven that the intent of the conduct was to purposely evade the reporting requirements.

CLOSING THE LOOPHOLES

Your legislation, as proposed in section 1, should close this money laundering loophole. The proposed section is a clear message and restatement to money launderers that all forms of structuring currency transactions for the purpose of evading the Bank Secrecy Act's reporting requirements constitute criminal conduct. The law, as rewritten, would clarify any ambiguities in the current law. I am fully satisfied of that.

Section 2 of S. 2306 is comprised of two subsections, (a) and (b). Both subsections concern the forfeiture authority of title 31. Section 2(a) adds two important provisions to the existing forfeiture authority in 31 U.S.C. 5317(c). Subsection (a) provides for the forfeiture of monetary instruments transported internationally without the filing of a currency and monetary instrument report [CMIR] required under 31 U.S.C. 5316(a), and also provides for the forfeiture of proceeds traceable to an instrument transported in violation of that section.

The adoption of this subsection would leave no question that if a person illegally transports monetary instruments in violation of section 5316(a) and then, for example, buys real property or opens a bank account with those monetary instruments, these traceable proceeds of those instruments—that is the real property or the funds in the account—would be forfeitable to the same extent as the original monetary instrument.

Section 2(b) creates expanded forfeiture authority under section 5317 of title 31. This proposed section would create a civil, in rem forfeiture authority which provides for the seizure of currency or property traceable to such currency which was transferred or intended to be transferred in a structured transaction, attempted transaction in currency, or any other transaction in currency violative of section 5313 of title 31.

Finally, section 3, the last substantive section of S. 2306, would impose civil liability upon persons engaged in conduct violative of section 5313(a) as amended by section 1, the structured transaction section. This section would permit civil suits and civil fines to be brought against persons who themselves were not financial institutions but who either attempted or actually engaged in structured transactions or who caused financial institutions to fail to, or to falsely, report currency transactions.

Again, the Department endorses this section as well.

I would like to, however, make some general comments concerning the whole subject of bank secrecy and money laundering. Obviously you have heard that this legislation and various regulatory proposals which are under consideration by the Department of the Treasury, and about which we were consulted, would go a long way toward closing many of the loopholes in the Bank Secrecy Act. However, we are fully satisfied—and I think the President's Com-

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mission on Organized Crime certainly is fully satisfied—that the regulatory scheme is not a fully satisfactory answer to the problem of money laundering.

For example, it is quite obvious that if the reporting requirements are complied with you have no violation of the law, even if the defendant is laundering billions of dollars in money.

Second of all, reports under title 31 cover financial institutions only, and even though the term "financial institution" has been interpreted very broadly, it is also quite clear that if someone can somehow get out from under that definition and be a money launderer he is totally exempt from the reporting requirements.

Third, under title 31, there is a great obligation imposed upon the Government to prove that the specific violator not only knew what he was doing but that he was aware of the reporting requirements and that the reporting requirements were applicable to him specifically. That again is something very difficult to prove in many fact situations.

As you have seen, the reporting requirements are quite easy to circumvent, and even though we think we can close a lot of the loopholes by this and other legislation, and by regulatory changes, still, the imagination and ingenuity of man is tremendous and we anticipate that other types of efforts may be made to circumvent future reporting requirements.

Finally, there are many situations where the money laundering activity is so serious and so severe that the 5-year maximum penalty provided for these reporting violations is simply not adequate enough. Greater penalties are needed for people who consciously launder money involved in major drug trafficking or other types of organized crime.

HEAVIER FINES AND SENTENCES

For that reason, based on the recommendation of the President's Commission on Organized Crime, we have proposed that money laundering itself be made an offense. This proposal is contained in S. 1335, which is pending before the Senate Judiciary Committee right now. Under section 2 of that bill, money laundering would itself be made a specific Federal crime. It is defined as engaging in a transaction involving monetary instruments or the wire transfer of funds, involving either a financial institution or anyone else if there is an effect upon interstate or foreign commerce, where the monetary instruments represent income or are derived from unlawful activity. The proposed penalty is a maximum imprisonment of 20 years, plus a maximum fine of $250,000 or double the value of the amount laundered. There is a separate forfeiture provision in section 9 of the bill. There are also civil penalties and provisions for extraterritorial jurisdiction when money laundering occurs abroad.

This bill also contains amendments to the Right to Financial Privacy Act discussed in Mr. Keating's testimony and contains provisions contained in S. 571 and 572. It would make the new offense of money laundering a predicate offense for RICO and for title III wiretap authorization, so it could be investigated properly. I should also note that section 8 of the bill provides a separate offense for

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knowingly receiving the proceeds of Federal offenses and would for the first time make the laundering of money from foreign drug offenses a United States crime, something that several other countries have right now, like Canada and Switzerland. It would enable us to forfeit proceeds of foreign drug trafficking, something that was recently called for by several international organizations that have considered this subject.

The Economic Summit which is meeting this week in Tokyo is expected to adopt a statement dealing with drug trafficking which, among other things, endorses the concept of comprehensive money laundering legislation. Last week, I attended a conference of the Organization of American States in Rio de Janeiro which did likewise.

You asked earlier about the problem of smurfing. I think, in conclusion, I should note a comment by my daughter. I was trying to explain to my wife one night in the car what smurfing was. My 3-year-old daughter said in the back of the car, "Oh, smurfs are hard to catch. You have to throw a net over them."

Well, I think that's the problem we have with money laundering. We need a very big net. And I think the money laundering bill, S. 2306, S. 571 and the regulatory changes which are under consideration, along with enhanced enforcement efforts by both the Departments of the Treasury and Justice, will form the necessary net to solve this problem.

That concludes my prepared statement. I will now yield to Mr. Sun, if that is agreeable with you.

Senator D'AMATO. Thank you, Mr. Knapp.

[The complete prepared statement follows:]

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STATEMENT

OF

JAMES KNAPP
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE

ON

MAY 1, 1986

CONCERNING

S. 2306 and S.571

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Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to appear before you today and to present the views of the Department of Justice on S. 2306 which amends the Bank Secrecy Act, as well as S. 571, whose provisions are contained within S. 1335 about which I would also like to comment.

Let me begin by saying that the Department of Justice welcomes and appreciates legislation designed to stop the illegal flow and laundering of currency involved in the trafficking of narcotics and other criminal enterprises. As the Subcommittee knows, money laundering--the process by which one conceals the true source, origin, and ownership of illegal income--is a big business. It is only through the money laundering process that the tremendous sums of currency generated by drug trafficking can be concealed, disguised, and, ultimately, made to appear legitimate. It is a process without which major drug trafficking cannot exist. As the Attorney General has stated, money laundering is "the life blood of the drug syndicates and traditional organized crime."

Since its enactment in 1970, the Bank Secrecy Act has received an ever increasing amount of attention from the federal law enforcement community in its efforts to curb the laundering of money by major drug traffickers. The Bank Secrecy Act has been a successful and significant weapon in the war on illegal drug trafficking and money laundering. Unfortunately, the problem of money laundering continues to grow in both size and sophistication. More people are involved, there is more money

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being laundered, and the schemes to "wash" "dirty money" increase in complexity. At every turn, drug cartels exploit new ways to avoid the detection, identification, and seizure of illegal drug-generated income.

S. 2306, which is now before you, has a clearly laudable goal. It seeks to increase the effectiveness of the Bank Secrecy Act in the battle against illegal money laundering. It is intended, in part, to strengthen the Bank Secrecy Act by remedying uncertainties created by recent case law. In that regard, the bill specifically prohibits the "structuring" of financial transactions for the purpose of evading the currency reporting requirements of the Bank Secrecy Act and it provides criminal and civil penalties for such conduct. S. 2306 also affirmatively subjects to criminal and civil liability those individuals who cause or attempt to cause domestic financial institutions either to not report currency transactions or to file reports which are false or lacking in material facts. The bill further provides for the forfeiture of those monetary instruments--and their traceable proceeds--which have been used in violation of the Bank Secrecy Act.

S. 2306 contains three substantive sections, each of which would amend or augment a particular existing section of the Bank Secrecy Act. Sections 4 through 7 are non-substantive provisions, that is, they either renumber existing laws to accommodate proposed substantive changes or they effect amendments of Title 26 to permit the use of Title 26 forfeiture procedures in support of forfeitures proposed by Section 2 of the Act.

If I might, I would like to review each substantive section with you and convey to you the particular reasons why the Department of Justice feels that there is a definite need for legislation in each of the areas covered by the bill.

Section 1 proposes additions to 31 U.S.C. §5313(a). This is the provision of Title 31 which requires the filing of currency transaction reports by domestic financial institutions on cash transactions which exceed $10,000. Section 1 addresses the problem of "structured" currency transactions. That is, currency transactions which are intentionally broken down into a series of smaller transactions, each under $10,000, for the purpose of evading the reporting requirements of the Bank Secrecy Act. This process, commonly known as "smurfing," is undertaken by individuals or groups of individuals who, intending to prevent banks from reporting their currency transactions, engage in a series of cash transactions each under $10,000 at different banks on different days, different banks on the same day, or at the same bank, or its branches, on different days. It is the purpose and intent of this process to transfer or "move" a much larger aggregate amount of currency through financial institutions while ensuring that banks do not report the actual movement of the currency or the identities of the parties involved.

Traditionally, the Department of Justice and the Treasury Department have together vigorously investigated and prosecuted persons under the Bank Secrecy Act for their involvement in this type of artifice. However, recent appellate court decisions,

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such as United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985), United States v. Varbel, 780 F.2d 758 (9th Cir. 1986), and United States v. Denemark, 779 F.2d 1559 (11th Cir. 1986), have reversed convictions of persons who intentionally caused financial institutions to fail to file currency transaction reports by "structuring" currency transactions. In effect, these court decisions interpret the present law as to either not prohibit or only partially limit the "structuring" of currency transactions even though it may be proven that the intent of the conduct was to purposely evade the reporting requirements of the Bank Secrecy Act.

The legislation proposed in Section 1 should close this money laundering "loophole." The proposed section is a clear message and restatement to money launderers that all forms of structuring currency transactions for the purpose of evading the Bank Secrecy Act's reporting requirements constitute criminal conduct. The law, as rewritten, would clarify any ambiguities in the current law.

Section 1 would also prohibit persons from causing or attempting to cause a domestic financial institution to file a false or materially deficient currency transaction report or causing or attempting to cause the institution to fail entirely in its duty to report currency transactions. This new language also criminalizes intentional conduct which purposely produces a false or materially deficient currency transaction report. This new language is, in part, a restatement of the law of causation found in 18 U.S.C. §2(b) and 31 U.S.C. §5313, and the law

pertaining to the intentional making of false statements in matters within federal jurisdiction codified at 18 U.S.C. §1001. This restatement of the applicability of 18 U.S.C. §§2(b) and 1001 to the Bank Secrecy Act was believed necessary following the decision of the First Circuit in Anzalone, supra. Certain language in that opinion and other cases (e.g., Varbel, supra) may be read as questioning whether an individual having no duty to report currency transactions may be held criminally liable for causing a domestic financial institution, which has such a duty, to fail to file reports of currency transactions.

The proposed legislation is needed as prosecutions based upon "structured" transactions and the "causing" of financial institutions to fail to file currency transaction reports continue to suffer from adverse case law. The proposed amendments should help clarify the state of the law and permit continued vigorous prosecution. Moreover, the "attempt" provisions of Section 1 are critical if the contemplated forfeiture provisions contained in Section 2(b) are to have their desired practical effect. I will be returning to this last concept in just a few moment when I discuss those forfeiture provisions. 1/

1/ I would like to suggest two technical additions to Section 1, adding language prohibiting the "attempt to structure" transactions, and the addition of the words "in currency" as follows:

Where Section 1 now reads:

No person shall cause or attempt to cause a
(Footnote Continued)

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Section 2 is comprised of two subsections, (a) and (b). Both subsections concern the forfeiture authority of Title 31.

Section 2(a) adds two important provisions to the existing forfeiture authority of 31 U.S.C. §5317(c). Specifically, subsection (a) relates to the forfeiture of monetary instruments transported internationally without the filing of a currency and monetary instrument report (CMIR) required by 31 U.S.C. §5316(a). Subsection 2(a) also provides for the forfeiture of proceeds traceable to an instrument transported in violation of Section

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(Footnote Continued)
domestic financial institution to fail to file a report required by this subsection, shall cause or attempt to cause a domestic financial institution to file a report required by this subsection that contains a material omission or misstatement of fact, or shall structure or assist in structuring a transaction for the purpose of evading the reporting requirements of this subsection.

I would add:

> No person shall cause or attempt to cause a domestic financial institution to fail to file a report required by this subsection, shall cause or attempt to cause a domestic financial institution to file a report required by this subsection that contains a material omission or misstatement of fact, or shall structure or attempt to structure or assist in structuring a transaction in currency for the purpose of evading the reporting requirements of this subsection.

These additions should permit criminal prosecution of individuals who undertake to structure financial transactions yet fail in the attempt for reasons beyond their control. Moreover, these additions to Section 1, in concert with the proposed forfeiture provision in 2(b), would permit forfeiture of funds used in an attempt to "structure" financial transactions.

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5316(a). The adoption of this subsection would leave no question that if a person illegally transports monetary instruments in violation of Section 5316(a) and then, for example, buys real property, or opens a bank account with those monetary instruments, that the traceable proceeds of those instruments, i.e., the real property or the funds in the account, would be forfeitable to the same extent as the original monetary instruments. Subsection 2(a) also clarifies and adds that an instrument "which has been transported" in violation of Section 5316(a) may be forfeited to the same extent as an instrument "which is being transported" (the present language of Section 5317). This should make it quite clear that forfeiture of an illegally transported monetary instrument may not be defeated by merely bringing that instrument to rest, that is, by placing it in a safety deposit box, for example.

Subsection 2(b) creates expanded forfeiture authority under Section 5317 of Title 31. This proposed section would create a civil, in rem forfeiture authority which provides for the seizure of currency, or property traceable to such currency, which was transferred or intended to be transferred in a structured transaction, attempted transaction in currency, or any other transaction in currency violative of Section 5313(a) of Title 31, as amended by Section 1 of the proposed Act.

An important feature of this section is that the proposed statute protects the rights of, and shields from forfeiture the property of, innocent owners, including innocent domestic financial institutions and other natural persons who may have

acquired the currency, or traceable property, for value and without notice of the violation.

The Department of Justice is in complete accord with the Treasury Department that this type of forfeiture authority is both desirable and necessary. This subsection would permit forfeiture, for example, in those cases where large sums of currency are being, or have been, processed through "counting houses" and "smurfing" operations but where the proof of the actual connection of the currency to a specific narcotic transaction is attenuated. For example, suppose a residence or office is found to contain a million dollars in cash, in ones, fives, tens, and twenties. Money counters are present and the financial records discovered at the location are in code. Further assume that testimony gathered during surveillance and undercover transactions would support that the persons controlling the currency knew that they were illegally "laundering money" and were actively engaged in exchanging currency for cashiers checks made payable to phony or fictitious payees. Even if we further suppose that a narcotics detection dog "alerted" us to the currency, that is the dog indicated that it had detected the odor of a controlled substance on the currency, the seizure and forfeiture of the currency might not be possible or permitted under existing forfeiture law. Narcotic forfeiture statutes requiring direct proof of narcotics transactions are often inadequate in that persons laundering money for narcotics organizations oftentimes do so on the tacit, unspoken (and an extremely-difficult-to-prove) understanding that the currency

being laundered represents drug proceeds. While we may find extremely large sums of "street money" in highly suspicious circumstances which we believe strongly suggest drug trafficking, often the "smoking gun" link to provable drug transactions is not available. In such cases, however, forfeiture under proposed Section 2(b) would be permitted. It is thus clear that such money laundering forfeiture authority is needed.

Subsection 2(b) dovetails with Section 1 of the proposed Act. The Sections should be adopted in tandem. Without the joint operation of these sections, forfeitures contemplated under 2(b) may be difficult to pursue in practice. Here's why. Section 1, in creating criminal liability for attempted and structured transactions, becomes a statutory "trip wire," necessary if forfeiture under subsection 2(b) is to be effective. Reports of currency transactions are not required by Section 5313(a) to be filed until 15 days after the date of the currency transaction in question. Under current law, which contains no attempt provision, federal authorities would have to wait 15 days for proof of the non-filing of a report, which represents the completed violation of Section 5313. This two-week "grace period" would, without attempt liability under Section 5313(a), give money launderers 15 days to "move" their money either offshore or out of a judicial district and thereby defeat federal attempts to seize and forfeit the instruments. This would occur while federal law enforcement waited to see if the currency report was "in the mail." Currency laundered for narcotics organizations traditionally has a quick turnaround time. What

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is, money earned from drug sales traditionally is quickly used and reinvested in the purchase of additional drugs. The joint operation of proposed Section 1 and Section 2(b) would permit federal law enforcement officials to effect seizures quickly, avoiding that two-week waiting period, when investigations reveal provable attempted violations of Section 5313.

Again, the Department of Justice strongly supports this type of forfeiture legislation. We believe that such forfeiture legislation promises to be an effective weapon against a vital link in drug trafficking. Moreover, it should increase forfeiture authority while still protecting the rights of innocent persons.

Section 3 of the Drug Money Seizure Act, the last substantive section of the proposed Act, would impose civil liability upon persons engaging in conduct violative of Section 5313(a) as amended by Section 1. This Section would permit civil suits and civil fines to be brought against persons who themselves were not financial institutions but who either attempted or actually engaged in structured transactions or who caused financial institutions to fail to, or to falsely, report currency transactions. The Department of Justice again endorses and supports this section and recommends its adoption.

Mr. Chairman, the Department of Justice sincerely appreciates and supports efforts to strengthen the Bank Secrecy Act as a weapon in the fight against illegal money laundering. These

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efforts should continue and we hope that through the passage of legislation such as the proposed act now before you, that the crime fighting aspects of the Bank Secrecy Act can be most effectively structured.

The Department of Justice is of the opinion, however, that the Bank Secrecy Act, while a useful and worthwhile tool against illegal money laundering, is in actuality a statutory scheme designed to produce reports of certain transactions in monetary instruments. The Bank Secrecy Act does not make money laundering itself a crime; it only requires that certain types of transactions be reported by certain types of persons. Further, under the Bank Secrecy Act we have no effective law with which to prosecute employees of businesses other than banks because of the necessity of proving that they were acting as employees of a financial institution and that, therefore, they had the obligation to file the required reports.

The Department of Justice has, in conjunction with the Department of the Treasury, prepared a bill which, if passed, would add a new section to Title 18 and would directly criminalize money laundering activities. S. 1335, as introduced in the Senate, would make it an offense to conduct or attempt to conduct a transaction involving monetary instruments or the wire transfer of funds if the transaction affects interstate or foreign commerce or is conducted through a financial institution the activities of which affect interstate or foreign commerce, provided that the government could show either of the following: first, that the person acted with the intent to promote, manage,

establish, carry on, or facilitate an unlawful activity (defined as a state or federal felony), or, second, that the person knew or acted in reckless disregard of the fact that the monetary instruments or funds represented the proceeds of, or were derived from, the proceeds of an unlawful activity.

We have carefully drafted S. 1335 to include not only the person who, for example, deposits, in a bank, cash which represents the proceeds of an unlawful drug transaction or uses such "dirty money" to buy a new car, but also the bank employee or car salesman who participated in the transaction by accepting the money if such a person can be proved to have known or to have acted in reckless disregard of the fact that the money involved was derived from criminal activity. Such persons, and in particular the employees of banks and other financial institutions who knowingly or recklessly help criminals dispose of the fruits of their crimes, facilitate criminal activity and are as deserving of punishment as the drug dealer or loan shark who brings them their ill-gotten cash or other monetary instruments derived from their cash. 2/

Another aspect of S. 1335 which merits particular attention is the coverage of persons who cannot be shown to have actual knowledge that the money he or she receives or handles in a

2/ H.R. 2785 would not apply to duly authorized government law enforcement or intelligence activities such as FBI undercover operations routinely described in annual appropriations bills. See, e.g., section 203(b) of P.L. 98-411 (98 Stat.1545, 1559).

transaction was derived from a crime but who acts in "reckless disregard" of the fact that the money was so obtained. The term "reckless disregard" is defined in the new money laundering offense as an awareness of facts and circumstances that lead the person to believe that a substantial risk exists that the monetary instruments involved in the transaction represent the proceeds of, or are derived from, an unlawful activity, coupled with his or her conscious disregard of this risk in a manner that constitutes a gross deviation from the standard of care that a reasonable person would exercise under the circumstances. Increasingly, with the enormous money derived from narcotics trafficking and organized crime, money launderers are persons such as lawyers and bankers who, for a price, launder money that is clearly the proceeds of a crime even though it cannot be proven that they have actual knowledge of its source.

Other sections of S. 1335 are not confined strictly to money laundering but would be particularly useful in dealing with those who handle "dirty money." It would add a new Section 2322 to Title 18 setting out two related, but distinct, offenses. The first offense covers knowingly receiving the proceeds of any federal felony. The offense would be committed, for example, by a money launderer who received the proceeds of any federal crime. The second offense would be committed by bringing into the United States any money or other property which has been obtained in connection with the violation of any law of a foreign country proscribing narcotics trafficking for which the punishment under the foreign law is imprisonment for more than one year.

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S. 1335 would also amend the Right to Financial Privacy Act to define and clarify further the extent to which financial institutions may cooperate with federal law enforcement authorities in providing information which is relevant to crimes by or against financial institutions, violations of the Bank Secrecy Act in Title 31, violations of the new money laundering offense, and violations of certain serious drug crimes. The effect of this amendment to the RFPA is to allow a bank or other financial institution to provide information which it has reason to believe may be relevant to one of these crimes without risking civil liability under the Act or entailing any obligation to notify the customer of such cooperation which the Act requires. The bill also provides for preemption of this field, thus avoiding the possibility of a bank employee incurring civil or even criminal liability under a more strict state statute for cooperating with federal law enforcement authorities. Moreover, it amends Rule 17(c) of the Federal Rules of Criminal Procedure to clarify the authority of the United States District Courts to issue orders commanding a person to whom a subpoena duces tecum is directed not to notify, for a specified period, any other person of the existence of the subpoena. Like the amendment to the Right to Financial Privacy Act negating the financial institution's obligation in certain situations to notify the customer that it has provided evidence of crime to law enforcement authorities, this provision is intended to prevent disclosure by third-party record holders, such as banks, of legitimate law enforcement interest in the records subpoenaed by a grand jury. Such

premature disclosure obviously has a high potential for impairing the investigation and should not be tolerated.

S. 1335 would also add a new Subsection (c) to 18 U.S.C. 2 to provide that "whoever knowingly facilitates the commission by another person of an offense against the United States by providing assistance that is in fact substantial is punishable as a principal." This offense would not be limited just to money laundering but would be particularly applicable to money launderers. For example, the new offense would be committed by one who, for a fee, took in small denomination currency that he or she knew was derived from drug sales and exchanged it for large, easy-to-smuggle bills for the dealer to illegally remove from the country. Although the person took no part in the smuggling and was indifferent as to the source of the money, he or she would facilitate the violation and be guilty as a principal. Such an offense would also be committed by a chemist who manufactures and sells a lawful but difficult to obtain ingredient to a person who he or she knows intends to use it to produce a controlled substance.

S. 1335 sets out a new Chapter 202 in Title 18 dealing with criminal and civil forfeitures. It provides for the civil forfeiture of all funds or monetary instruments involved in the violation of the money laundering offense, and of the receiving proceeds offense if the proceeds were obtained in violation of either a federal or foreign felony provision pertaining to controlled substances. The new chapter also provides for the criminal forfeiture of money or other property involved in a

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violation of the money laundering or receiving proceeds offense. Criminal forfeiture would apply to any violation of the new receiving proceeds offense, not just the receiving of money or property derived from a drug crime.

There is before you another legislative proposal upon which I would like to comment. I refer to The Drug Money Seizure Act, S. 571, which, like S. 2306, is designed to increase the effectiveness of the Bank Secrecy Act as a tool against illegal money laundering. S. 571 contains three amendments to the Bank Secrecy Act. First, the bill strengthens the Bank Secrecy Act by giving greater investigative authority to the Secretary of the Treasury. Specifically, it gives the Secretary the authority to summon from financial institutions records that the institutions are required to maintain under the terms of the Bank Secrecy Act. The bill would also permit the Secretary to summon the custodians of such records and to take relevant testimony from them under oath. The second amendment, proposed by S. 571, increases the amount of possible civil fines which could be recovered from individuals or institutions who violate or who cause violations of the Bank Secrecy Act. The bill would permit the imposition of civil fines up to the value of the monetary instruments involved in illegally unreported currency transactions. The third proposed amendment would more clearly define the territorial jurisdictions covered by the Bank Secrecy Act. Each of the amendments embodied in S. 571 appropriately augments or clarifies the Bank Secrecy Act.

I would point out, however, that each of these amendments,

also appears, in substance, in S. 1335, The Money Laundering and Related Crimes Act. Moreover, S. 1335 contains additional features not found in the Drug Money Seizure Act. For example, S. 1335 provides for broader summons authority and further provides for specific judicial procedures through which the Secretary's summons authority may be enforced.

In summation Mr. Chairman, the Department of Justice endorses legislation to combat the illegal laundering of drug proceeds. We at the Department of Justice support S. 2306, S. 571, and S. 1335.

Mr. Chairman, that concludes my prepared statement and I would be happy to answer any questions at this time.

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STATEMENT OF BRIAN A. SUN, ASSISTANT U.S. ATTORNEY, CENTRAL DISTRICT, CALIFORNIA

Mr. SUN. Thank you, Mr. Chairman. I would like to thank you for giving me the opportunity to speak here today. It is not all the time that people in the field have this opportunity, and we often complain that we do not have a say in what's going on back here. I think that your invitation here today at least has checked that complaint to some extent.

As my prepared statement indicates, sir, I am an assistant U.S. attorney for the central district of California, which covers much of central and southern California, including the Los Angeles area. I presently supervise what we call the financial investigations task force, which is a combined interagency effort directed primarily at narcotics money laundering activities. As my statement indicates, we have been in operation for approximately 6 years now and we have basically evolved into a task force that really is focusing itself primarily toward interdicting South American cocaine money as well as money derived from perhaps Asian heroin trafficking and other sorts of narcotic sources.

What I would like to do here today is to supplement the remarks in my statement and to go over some of the key areas that I perceive are ones that should be brought to the attention of the committee with respect to prosecutorial and investigative problems that we have encountered in the money laundering area.

FINANCIAL TASK FORCE

First of all, by way of background, the financial task force in Los Angeles is like that of many around the country that exist today. I think we have in excess of 30 of them, perhaps 40 of them now around the country in different cities with the purpose of taking a look at laundering, primarily as it exists through financial institutions. That, of course, gives rise to the importance of the currency reporting requirements and leads us inevitably to many of the kinds of schemes that we have already discussed here today, namely structured cash transaction schemes.

With respect to our investigations in the structured cash transaction area, I can tie that into one of the key investigatorial problems that we have out in California. That problem relates to the matter of disclosure of an investigation by a financial institution to a particular target. As I have indicated in my remarks, Mr. Chairman, the problem is this: through the grand jury process we serve grand jury subpoenas on a financial institution seeking certain records that relate to suspected money laundering activity. The most common example would be in the smurf situation, where someone is walking up and down Wilshire Boulevard in Los Angeles buying cashier's checks for under $10,000. Anybody who goes to California knows that you could do that; you could hit about 20 banks in about 4 hours and launder in excess of $150,000 for your 4 hours work.

In order for us to follow the paper trail efficiently we have to go into these banks, obtain the records of the transactions, in order to build any type of probable cause or evidence to support some kind of arrest or search warrant or the like.

But without any response from the bank, we could be—or a quick response from the bank, we could be impeded in that investigation. Or if the smurf has an account at the bank, which many of them now are doing—they are opening up bank accounts all over Los Angeles—the bank wants to disclose that subpoena to the customer and tell them that we are looking at them. Well, I can tell you that in my experience and that of Mr. Saphos, who has as much if not greater experience than I do in this area, that that would mean the end of the investigation because many of the people that we focus on, particularly the South American-based cocaine traffickers, are in the wind just like that, as soon as they are notified that law enforcement is looking at them. These are people who when they operate on a day-to-day basis communicate through pay phones and through beepers; they drive around in circles for hours to avoid surveillance. These people are very, very good at what they do. And the problem of disclosure is compounded by that fact as well.

CIVIL LIABILITY FOR BANKS

In essence, to deal with the problem that I am raising to the committee, about 2 years ago I met with a number of bank counsel informally in California, legal counsel of some of the major banks of California. And what they urged me to do was to try to get some legislation going in the area of disclosure and providing banks with some kind of protection against civil liability if they cooperate with the Government or to encourage their bank teller to call up an IRS or Customs special agent and say,

Hey, the person you told me about who fits that profile is in my bank right now, buying a $9,000 cashier's check. They were in here last week and the check was ultimately sent to Panama for deposit.

We want to encourage that kind of phone call and the banks say that they are happy to do that if they can get some measure of protection.

This led to my boss, Robert C, Bonner, the U.S. attorney for the central district of California, to send a memorandum to the President's Commission on Organized Crime outlining the nature of the problem and suggesting remedial legislation.

The result of that memorandum was a recommendation in the President's Commission's report that was released in October 1984, recommending that certain provisions of the Right to Financial Privacy Act of 1978 be amended to basically provide banks with protection against civil liability and preempting any State law to the contrary which might in the view of the banks require them to disclose a subpoena to the customer. Because that is really what is the issue here. Many bankers throughout the country believe that State law requires them to disclose to the customer.

So that is one area we would like to see some legislation moving in the direction that we hope to move in and that is to work with banks in combating the money laundering problem.

I might also add a couple other things, one with respect to the nature of the problem here—and we are talking about in the Financial Privacy Act situation, a balance between the privacy interest of the individual and the public's interest here.

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I think we all agree that in 1978 when the Financial Privacy Act was adopted, the drug problem in this country had not reached the stage to which it is at this juncture, and in terms of balancing competing interests, all I can say to you, Mr. Chairman and the members of the committee, by way of example, and not a parade of horribles, all you need to do is go down to Federal court in Los Angeles on a Monday afternoon or any State court and watch the judges sentence people and listen to the pitches from the defense lawyers and from the defendants as to why they are there for their crimes. I would say to you that at least 70 percent of the people at least in Federal court who get sentenced for serious crimes, be they for bank fraud or bank robbery, have a drug-related type problem that causes them to commit the crime to which they are now facing judgment.

So I say to the committee and to you, Mr. Chairman, that the problem is such that we think that the balancing ought to be in favor of the public interest here in obtaining some protection for the banks on this issue of disclosure and in that regard the Government and the banks, at least in California, are speaking as one voice. The California Bankers Association, which is the leading bank lobby in that State, has specifically told me that I can advise this committee that they are 100 percent behind that remedial legislation which would encourage them basically to call up law enforcement and cooperate with us rather than keep them in this muddy area where they are perhaps exposed to some civil liability if they actually reach for the telephone.

[The complete prepared statement follows:]

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STATEMENT OF

BRIAN A. SUN
ASSISTANT UNITED STATES ATTORNEY
CENTRAL DISTRICT OF CALIFORNIA

BEFORE THE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE

ON S.571 (DRUG MONEY SEIZURE ACT) and
PROPOSED AMENDMENTS TO THE BANK SECRECY ACT

MAY 1, 1986

A. Introduction

Thank you for permitting me this opportunity to address you regarding a subject which is of great concern to us all -- the laundering of drug money through the use of financial institutions.

I am an Assistant United States Attorney for the Central District of California, which covers much of Central and Southern California, including the Los Angeles metropolitan area.

I am presently Chief of the Financial Investigations Task Force (FITF), which combines the resources of the Internal Revenue Service, Criminal Investigation Division, the United States Customs Service, the United States Attorney's Office and other Federal, State and local law enforcement agencies. FITF, since its inception in 1980, primarily targets the financial activities of major narcotics traffickers. In doing so, FITF, like many other financial task forces which have been formed around the country, directs its efforts against the money laundering activities of major narcotics violators who must find a way to convert their enormous cash profits to other negotiable forms.

My intention here is to discuss the background of our financial task force and provide some examples of the cases that FITF has developed and prosecuted since 1980. In addition, I will outline some of the investigative and prosecutorial problems we have encountered in attacking money laundering, particularly as they relate to the laundering of drug profits through domestic

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financial institutions. This discussion will include the problems raised by schemes involving structured cash transactions, as well as the need for remedial legislation in this area. As the Committee is aware, domestic financial institutions are a key choke point for money laundering and therefore must be scrutinized if we are to take meaningful steps to attack this growing problem.

B. Cases Investigated and Prosecuted by the Los Angeles Financial Investigations Task Force

In the late 1970s, as narcotic trafficking in this country began to increase in alarming proportions, federal law enforcement agencies began to recognize the need to conduct financial investigations of this enormously profitable cash-oriented business. For instance, in 1978-1979, a multi-agency investigation of a major Mexican-based heroin trafficking ring operating in Southern California revealed that at least $32,000,000 in heroin profits had been funnelled through United States and Mexican banks. In this prosecution, both narcotics and substantive tax violations were successfully brought against the Araujo family organization. Jaime Araujo, one of the leaders of this heroin ring, is currently serving a thirty-five year prison sentence for his role in this criminal enterprise.

In 1980, the Financial Investigations Task Force, a prototype of the kind now in existence throughout the country, was formed in Los Angeles by my predecessor, Robert J. Perry. FITF focused its efforts towards investigating major narcotics traffickers who

also had significant financial assets or who had left a financial trail reflecting large fortunes derived from narcotics trafficking. FITF's early investigations frequently uncovered purchases of large mansions, exotic automobiles, yachts, etc., all of which reflected the extravagant life style of the successful narcotics trafficker. Often these tax-related investigations would result in the only prosecution of the drug trafficker because the evidence was insufficient to support a narcotics prosecution. We also found, however, that these type of tax investigations were extremely time consuming because of the substantial time required to follow paper trails and would often result in the target's awareness that he/she was being investigated.

Our emphasis began to change somewhat in 1981-1982, when FITF prosecuted the Garfield Bank and a number of its officers for criminal violations of the currency reporting laws. This case involved the use of a local Los Angeles bank which laundered millions of dollars derived from drug trafficking. This laundering was facilitated by the services of a Los Angeles attorney who was later found murdered in a parking lot near his offices. The Garfield Bank pled guilty to felony violations of Title 31 of the United States Code and was fined an amount equal to its net annual profits for the year 1981. A number of bank officers, including the bank's president and founder John Gabriel, were also convicted after trial.

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In 1983, FITF prosecuted a narcotics money laundering organization dubbed by the press as the "Grandma Mafia". This case involved two grandmothers who laundered millions of dollars derived from cocaine trafficking. This investigation involved government undercover agents posing as individuals capable of laundering drug money through a bank. The defendants were told that a crooked banker was assisting the undercover agents by not filing currency transaction reports for the large amounts of cash that were delivered to them by the defendants. In reality, a local bank cooperated with the government in its undercover operation. Barbara Mourin, the primary defendant in that case, was convicted of racketeering and continuing criminal (narcotics) enterprise charges and received a sentence of 25 years imprisonment.

In 1983, FITF began operating under the umbrella of the President's Organized Crime Drug Enforcement Task Force (OCDETF). OCDETF presently operates out of thirteen regions throughout the country and is spearheading the Administration's attack on drug trafficking.

In 1984-1985, FITF prosecuted a number of cases involving the laundering of drug money through structured cash conversion schemes (often dubbed as "smurfing"). As the Committee is aware, the modus operandi of such schemes generally involves the conversion of large amounts of drug cash into negotiable instruments (i.e. cashier's checks) for amounts of less than $10,000 in order to avoid the currency reporting requirements of the Bank Secrecy Act.

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For instance, in 1984, FITF prosecuted a large "smurfing" ring which laundered in excess of $25,000,000 in cocaine money through a cashier's check conversion scheme. Gustavo Ricardo Ronderos, one of the kingpins of this operation, employed a number of runners who were specifically directed to purchase numerous cashier's checks (each for less than $10,000) at various banking locations in the Los Angeles metropolitan area. Runners would typically convert between $100,000 to $200,000 in a single day and utilize as many as nineteen different banking locations. The indictment returned by the grand jury against the Ronderos organization charged the defendants with causing a single financial institution or branches of the same financial institution not to file currency transactions reports pursuant to their unlawful scheme. Specifically, the indictment charged that Ronderos and his runners furthered their scheme by using fictitious names, addresses and other misleading information in making their cashier's check purchases, as well as concealing the true source of the money, which was the proceeds of cocaine trafficking. In addition, the indictment further charged Ronderos with operating his own financial institution and failing to file currency transactions reports, as well as participating in a conspiracy to aid and abet the possession and distribution of cocaine by laundering the proceeds of that illegal activity.

A recent decision by the Ninth Circuit Court of Appeals reversed several of the subsequent convictions obtained against

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Ronderos and a number of his money runners. Specifically, the Ninth Circuit held that the structured cash transactions engaged in by Ronderos and his cohorts were not violative of the Bank Secrecy Act (Title 31, United States Code, Section 5311, et. seq.) because the financial institutions involved had no duty to file currency transactions reports. The government is currently seeking further appellate review of this decision. The Ninth Circuit did affirm Ronderos' conviction of acting as a financial institution under the facts of the case, as well as his conviction for participating in the narcotics money laundering conspiracy.

In the area of structured cash transactions, however, the Ronderos case and the recent Ninth Circuit decision in United States v. Varbel, 780 F.2d 758 (9th Cir. 1986), have delivered a significant blow to the government's efforts to combat narcotics money laundering in California. As I will discuss further, the most effective way to address this problem is through remedial legislation. Such legislation, which this Committee is presently reviewing, covers a variety of areas relating to our investigative and prosecutorial concerns in the money laundering context. I hope next to focus upon some of the more significant of these concerns as they effect the efforts of FITF.

C. Prosecutorial/Investigative Concerns in Attacking The Laundering of Drug Profits Through Domestic Financial Institutions

1. The Need for Greater Cooperation From Banks in Money Laundering Investigations

From the prosecutor's perspective, prior to the Bank of Boston's guilty plea to a Bank Secrecy Act criminal felony violation in 1985, banks were generally lukewarm in their overall cooperation in money laundering investigations. Prior to the Bank of Boston plea, bankers had generally argued that their duties to their customers outweighed any public interest in investigating illegal drug traffickers and money launderers. However, following the public outcry which grew out of the Bank of Boston case and the close scrutiny now given to the compliance of financial institutions with the Bank Secrecy Act, there has been a willingness by banks to provide federal law enforcement with greater assistance in conducting investigations of money launderers. This shift is rooted in the bankers' recognition that it is simply bad business for them to be associated with money laundering, as well as the recognition by some bankers that they have a moral and social duty to assist law enforcement.

An example of this shift in attitude is evidenced by current legislation now pending in the Congress relating to the issue of protecting banks against civil lawsuits when cooperating with a

government investigation. Originally proposed by the President's Commission on Organized Crime and included in the Administration's money laundering bill, this remedial legislation directs itself to the problems facing federal law enforcement when financial institutions disclose the existence of federal grand jury subpoenas to their customers in sensitive criminal investigations. Many bankers throughout the country assert that state laws and/or their interpretation of federal law require them to notify a customer of the receipt of a federal grand jury subpoena or similar federal law enforcement requests for a customer's financial records. They argue that failure to disclose the subpoena will expose them to potential civil liability.

The implications of such disclosures are obvious. Targets of grand jury investigations may flee and/or dissipate assets or seek to cover-up their activities if notified that they are being investigated by a federal grand jury. This potential obstruction to an investigation is felt particularly by FITF in investigating narcotics traffickers who are very sensitive to law enforcement activities and who depend upon financial institutions to facilitate their laundering activities.

This problem has become pervasive and an impediment in conducting major white collar and narcotics financial investigations throughout the country. For example, at a recent Department of Justice seminar where I spoke on this issue, numerous prosecutors from all over the country approached me after

my talk and requested legal materials that I had compiled on this issue. The upshot of these discussions with my colleagues was that this problem is not simply isolated to California, but is nationwide in scope.

FITF experiences this problem on almost a daily basis. A large number of grand jury subpoenas must be served to follow the various paper trails left by narcotics money launderers (particularly in cashier's check conversion schemes). These investigations are further compounded by the fact that there are seemingly innumerable banks in California. My colleagues and I are often advised by bank legal counsel that a subpoena will be disclosed to the customer unless a court order is obtained. Although an application for such an order is possible, given our scanty resources it is simply impractical for us to seek a court order for every grand jury subpoena that is served in each of our investigations. In addition, courts do not always grant these applications. Although we have had some success in persuading banks not to disclose subpoenas, in many instances FITF has had to resort to an alternative means of investigation or simply give up the inquiry if the bank proves to be stubborn in its position regarding disclosure.

There have been reported incidents of where disclosures which have jeopardized pending cases. A much publicized example was a case in New York where officials of E.F. Hutton advised persons tied to unlawful laundering activities that there was a federal criminal investigation looking into their transactions.

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It has been documented that this disclosure permitted some of the targets in that case either to flee or dissipate their assets such that the government was unable to forfeit or recover the losses resulting from the targets' illegal activities.

In recognition of this problem, Robert C. Bonner, the United States Attorney for the Central District of California, sent a memorandum to the President's Commission on Organized Crime in late 1984 focusing upon these issues and suggesting that legislation was the best way to rectify this problem for law enforcement. This legislation (first proposed by the President's Commission) would amend the Federal Right to Financial Privacy Act of 1978 (RFPA) to provide banks with protection against civil liability for cooperating with federal law enforcement, as well as expressing Congress' intent to preempt any state law to the contrary.

On this particular legislation I can say without qualification that the bankers in California and the government are speaking with one voice. I have been advised by the General Counsel for the California Bankers Association, (CBA) R. Blair Reynolds, that the CBA fully supports and strongly desires the passage of this remedial legislation regarding the issue of disclosure. The sentiment of the CBA is also further supported by my conversations with the legal counsel of several major California banks who originally suggested that this legislation was necessary.

There is a sense among both prosecutors and bankers in California that we are beginning to move in the same direction in terms of attacking money laundering. In the "Grandma Mafia" case and our smurf prosecutions, banks played an integral role in our ultimate successes. There are, of course, some banks that are entrenched in the position that they will not cooperate with the government or who in fact are directly involved in unlawful activities. However, the vast majority of the banks in California, and I believe throughout the nation, are desirous of combating money laundering. Banks are unwitting participants in money laundering and the remedial legislation I have spoken about will further encourage banks to cooperate with the government in its efforts to interdict money laundering through financial institutions.

2. Structured Cash Transactions Scheme

As I have already indicated, structured cash transactions schemes have become a significant problem for FITF and other task forces directed against money laundering. In Los Angeles, in a sixteen month period, over seven indictments and over forty individuals were indicted in various schemes which sought to avoid compliance with the currency transactions reporting requirements. Virtually all of these cases derived from FITF investigations which were directed towards the laundering of drug profits. The Committee is aware that the numerous convictions obtained from these cases are now in jeopardy given the recent Anzalone, Varbel, DeLa Espriella (Ronderos) and Denemark decisions. Although the

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government may seek further appellate review of the holding in some of these decisions, there a consensus among the courts, the government and the bankers that these schemes should be clearly made illegal and that law enforcement should be provided with adequate tools to prosecute such schemes.

In the same vein, although violations of the Bank Secrecy Act were recently made predicate offenses for violations of the Racketeer Influenced and Corrupt Organizations statute (RICO),[1/] the recent decisions in Anzalone and Varbel have undercut the government's ability to utilize this new tool. RICO cannot be utilized, for instance, in structured cash transaction schemes if the underlying predicate offenses are not clearly illegal acts in the eyes of the court. For example, recently in Los Angeles, a federal grand jury returned a twenty count indictment (including a RICO charge) against a number of individuals associated with an auto parts store which laundered in excess of $5,000,000 in cocaine profits. The money was laundered through the corporate bank accounts of the auto parts store and ultimately sent to east coast bank accounts controlled by Colombian money exchangers. These Colombian money exchangers would then credit an amount in Colombian pesos to their narcotics trafficker clients in Colombia; the money exchanger would then sell the dollars in the east coast bank accounts to legitimate businessmen in South America who sought to purchase dollars in the United States for the acquisition of business machinery and other such items.

1/ Title 18, United States Code, Section 1961, et seq. This change was made by the Comprehensive Crime Control Act of 1984.

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In furtherance of the laundering scheme, the defendants in this recent case purchased cashier's checks for under $10,000, using fictitious names and addresses. They also succeeded in having a local bank place them on its exempt list. This enabled the defendants to launder larger cash sums in such lump amounts as $300,000 in a single transaction.

Following the recent decisions in Anzalone and Varbel, the district court dismissed nineteen of the twenty counts in the indictment, including the RICO charge. The government proceeded to trial against those defendants who had not pled guilty on the remaining charge of conspiracy to aid and abet narcotics trafficking (through money laundering). Four of the five defendants who went to trial were acquitted and the fifth defendant will be retried later this year. It is our belief that a different result could possibly have occurred in this prosecution if tougher money laundering laws had been in place.

Although structured cash transactions schemes are but one type of money laundering, they do pose a significant problem because of the vital role played by financial institutions in the movement of cash in this country. As I will discuss next, the current anti-money laundering legislation presently before the Congress seeks to address these concerns and provide law enforcement with greater tools to attack the problem.

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3. Need for Remedial Legislation

In reaction to recent court decisions such as Angalone and Varbel, as well as its recognition that additional measures must be taken to combat the spiraling growth of money laundering, the government and a number of congressmen have proposed various bills to strengthen our ability to interdict money laundering through financial institutions. In addition, such states as Florida and Georgia have adopted anti-money laundering statutes in order to deal with this serious problem. In California, there is now pending legislation (very similar to that now before the Congress) which would make it a violation of state law to launder money through financial institutions.

Most of this corrective legislation recognizes that the tightening of the currency transaction reporting regulations alone will not solve the problem. Our experience with structured cash transactions schemes illustrate the inherent limitations of developing money laundering prosecutions solely around the failure to file currency transactions reports. For instance, a money launderer could easily utilize a different scheme to funnel his/her money through a financial institution that would not involve a structured cash transaction scheme. Hence, there is a dire need for a money laundering statute which can apply to the multitude of schemes which have emerged in recent years. A statute with stiff penalties and broad enough to cover the type of schemes perpetrated by the imaginative money launderer, is therefore both necessary and appropriate.

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In addition, forfeiture authority for violations of the currency transaction reporting provisions of the Bank Secrecy Act, as well as forfeiture provisions for any general money laundering statute are simply a must in terms of preventing these profits from eluding the hands of law enforcement and returning these monies to their proper place in the Treasury of the United States.

In the area of forfeitures, we have had numerous examples of "smurf" cases where large amounts of cash and/or negotiable cashier's checks were seized from a "smurf" and the current drug forfeiture laws could not be applied due to insufficient evidence. Although there are some means by which that money can be seized, the most practical and efficient resolution to the problem (rather than giving the money back to the money launderer) would be to provide the Treasury Department with forfeiture authority for any violation of the Bank Secrecy Act, similar to the provisions set forth in Title 21 United States Code, Section 881.

D. Conclusion

In California we face a money laundering problem which is multi-dimensional and bordering on a crisis level. We are faced with the laundering of South American narco dollars and the growing challenge presented by such off-shore havens as Singapore and Hong Kong. Without tough legislation to combat money laundering and given the limited resources available to interdict this problem, our efforts in the future could go for nought. Speaking for my colleagues, particularly the hard-working Special

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Agents of the Internal Revenue Service, Criminal Investigation Division and the United States Customs Service and other agencies that comprise FITF, we urge this Committee to be cognizant of the seriousness of the problem and address it by adopting such legislation as it deems fit to support our efforts in this area.

Thank you for permitting me this opportunity to address you today.

Senator D'AMATO. I wonder if I might do something a little unusual at this point since we do have a third panelist, Mr. Hodges, who is general counsel and executive vice president of the South Carolina Bankers Association and is representing the ABA today. Why don't you come on up here and join this panel. I don't want you to believe that we desire to isolate the bankers.

SAFE HARBOR PROVISION

Mr. Hodges, if I might impose upon you and if you're not prepared to answer this I'll understand—you heard Mr. Sun and you also heard Mr. Knapp, but I think Mr. Sun put it that he's out there in that field and certainly Mr. Saphos could give you many examples.

Has the ABA taken a position in regard to the provisions contained in S. 1335 as it relates to bank secrecy and your ability to shield yourselves from what you might think would be either local laws, State laws, or civil litigation—would you be supportive of that provision which would then give your employees the ability to report the kinds of suspicious transactions that Mr. Sun alluded to?

Mr. HODGES. Thank you, Mr. Chairman. Yes, we have testified on the administration bill. We do have some concerns about the privacy aspects of that bill. A safe harbor sort of provision is always a comforting aspect, especially when you have laws of this nature involved. At the same time, we are concerned about the possibility of our tellers or our loan officers on the front line, so to speak, being put in a position of making a judgment of that magnitude. We feel that perhaps some language could be drafted that would meet the concerns that have been expressed, while at the same time protecting our bank employees, and our customers.

We are very much interested in that approach.

Senator D'AMATO. So you are open to that approach, but you would like to have some clarifying language, though, as it relates to the employees.

Mr. HODGES. We're concerned about a safe harbor provision, but believe that there would be a tendency for a bank employee to err on the side of disclosure, and while again there may be some law enforcement benefits to that, we do have concerns about the privacy aspects as far our customers are concerned.

Senator D'AMATO. I have some concerns on the privacy side, individual rights, but I must confess that I also see a situation developing where, we're just going to continue to hemorrhage from two areas unless we begin to apply some rules of good common sense to give law enforcement officials and enforcement people, including the IRS.

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No. 1, those who abuse the system and really use it in such a way to circumvent the law, the smurfs who run up and down the boulevards, and we have them in New York as well, making deposits of $7,500 and drawing out those checks, and I think many employees have a pretty good idea that there's something terribly wrong when they see these kinds of activities taking place, that this is not the traditional customer.

It seems to me that we're not asking or telling them that you must make these reports. Good sense suggests that they should be able to report to a higher authority within the bank who would then make a judgment to say, "Look, we see this activity, report the nature of it, we believe it's something you might want to take a look at." Then leave it to the Treasury, the IRS, and Justice Department people to follow up on that.

And I think that most Americans would agree with this approach. I think it would be interesting to take a public poll on this issue given the magnitude of the drug epidemic and given the fact that approximately $100 billion in taxes aren't being paid thereby creating a heck of a burden in terms of what other people have to pay in terms of fair share. We're not talking about little transactions here. We're talking about substantial, repeated cash transactions.

But I think you might be right. If we could get some kind of language so we're not dealing with the individual citizen who might be putting in $50 a week and so the teller says, "Aha, I'll bet this person isn't reporting these dollars to the Internal Revenue Service." So somehow I think maybe there has to be a distinction made.

Has the ABA been working with the Justice Department in trying to formulate some kind of legislative language?

Mr. HODGES. Yes, sir. As I say, we have appeared at hearings in the past in the House and Senate Judiciary Committee and we offered at that time to meet with the Justice Department officials. We are still very happy to do that. We think that we are in a unique position here to be of real service because we certainly agree with everything you just said and we certainly agree with the ends that you describe.

Our concern is that we balance those carefully with the rights of our customers and also we'd like to protect our employees to the extent possible.

Senator D'AMATO. Mr. Knapp, I think you wanted to say something?

Mr. KNAPP. Yes; I have participated in at least one meeting with representatives of different banking associations sponsored under the auspices of Congressman McCollum, and I'll certainly be pleased to meet with Mr. Hodges here and any other gentlemen at any time to discuss this.

Senator D'AMATO. Wonderful.

Mr. Saphos, do you have anything that you would like to add? Like Mr. Sun, you've been out there on the battle line and now you're here directing our forces in these operations and let me commend you for the tremendous work you have done in this area. You certainly have carved out a great niche for yourself and hopefully you will serve as a role model. You worked out in the field and now in the work you're undertaking.

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LONG LINES DISCOURAGE SMURFS

Mr. SAPHOS. Thank you, Senator, I appreciate that.

First of all, sir, I would beg to correct you concerning smurfing in New York. My understanding is from several money launderers that I've debriefed over the years that the lines at the banks in New York are a little too long to encourage smurfing.

Senator D'AMATO. Is that right?

Mr. SAPHOS. Yes, sir. In fact, they have to fly the money out of New York and take it to other metropolitan areas to smurf it.

Senator D'AMATO. Isn't that interesting? Long lines discourage the smurfs.

Mr. SAPHOS. Yes, sir. I don't know how that encourages the banking industry. But speaking of encouraging the banking industry, law enforcement identifies the members of the banking industry in many instances as some of our best friends. They are cornerstones of their community and they are as interested as anyone else in their community in preventing crime and they're certainly as interested as anyone else in our country in ending the scourge of the consumption of drugs in this country which they see affecting them in a business sense and in a personal sense in their communities.

We want to encourage all their actions to try to prevent the use of the financial institutions in our country by the money launderers to facilitate the drug trade in our country and we see these corrections—not corrections, but explanations really of what the intention of Congress was in their Right to Financial Privacy Act and the rights that the institution has when it perceives a crime being conducted—the right they have to report that to law enforcement authorities, to relieve them of any sense that they have——

Senator D'AMATO. Let me interrupt you just for a moment. Something just struck me. Supposing, Mr. Hodges, someone who's never done business with the Smith Bank in New York—not in the Carolinas—were to come up and attempt to deposit or attempt to purchase a cashier's check for $7,500. This person is totally unknown to that banking institution, had never done any business with that institution. Let's say they took out all these dollars in $100 bills, whether or not they looked the part of a legitimate businessman or not, we won't even go into that. Let's suppose for this hypothetical, you'd say where did this person ever get $7,500 and why they want to deposit it or why they want to write a cashier's check on that.

Does the bank today customarily have the right to say we're not going to take your $7,500 and we're not going to give you a check on that?

Mr. HODGES. Yes, sir. I'm not that familiar with the operation of the banks in New York, but that would look unusual in South Carolina.

Senator D'AMATO. Let me ask you this. Maybe again this is an unfair question. But I'm wondering as a matter of practice, what would the practice be? Maybe you might know, Mr. Saphos. In your opinion, would they honor that, give them the money order, or would they say, "I'm sorry, you'll have to go to another institution or your own personal bank."

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Mr. SAPHOS. It's unfortunate, and when I discuss this smurfing problem with bankers I point out that usually the sale of cashier's checks by financial institutions is done as an accommodation to its clients and it is done more as a service than as a profitmaking incentive. In fact, I would suggest that the money that an institution collects on a sale of a cashier's check, for instance which is $2 or $5 but most often is even waived by the institution, does not compensate the institution for the service that it renders. And we have strongly suggested to such institutions that they not sell cashier's checks, or manager's checks, or official checks, or whatever they wish to call it to persons who are not clients.

They generally do this to persons who are not clients as a way of encouraging new persons to open up accounts in the bank. I would strongly suggest that the best way to encourage them to open up an account in the bank is to refuse to sell them a check unless they open up an account in the bank.

RESTRICT CASHIERS CHECKS TO CUSTOMERS ONLY

If the banking industry would universally adopt that, then obviously it wouldn't be a situation where one bank was afraid not to sell cashier's checks to noncustomers because they're afraid the noncustomer will go to their competitor across the street and therein open an account.

I would also note that in conjunction with the Department of the Treasury, the Department of Justice is now working on amendments to the current regulations which implement the Bank Secrecy Act, title 31, to address regulatory schemes for attacking the structured transaction problem which will complement the chairman's bill.

Mr. HODGES. Mr. Chairman, just to add to that, I have always advised our banks that they do not have to do business with anyone so long as they don't discriminate. So again, in our State it would be very unusual for a bank to perform that service for a noncustomer.

Senator D'AMATO. It would seem to me that that might be an area in which we could get the ABA deeply involved. If you could isolate it down to just a very few banks I would imagine that most institutions would really come together, certainly with the encouragement of the various regulators and the Justice Department to say, look, we're going to adopt a standard procedure. We're just not going to give a cashier's check unless you meet certain requirements, unless you're a known person in the community, someone that's known, and we're certainly not going to do it on a regular basis because there are very few occasions when the kind of thing that the smurf does the ordinary citizen would walk up to and say, "Here's $10,000 and give me a cashier's check," when that person wouldn't be known or be able to prove or offer satisfactory proof as to who they are within the community or what the purpose was, et cetera. And certainly they wouldn't want to do it if it was an illegal money laundering operation and regularly offer that kind of proof. Maybe—not maybe, but there should be, if not in the body of law, certainly by way of agreement throughout the financial community and the banking community a standard of conduct or a

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policy as it relates to these cash transactions that would go a long, long way to impeding that kind of operation.

Mr. SUN. Mr. Chairman, I might add, to supplement your comment——

Senator D'AMATO. Would you follow up on that, Mr. Hodges, Mr. Knapp, and Mr. Saphos, inasmuch as this is operation money block—operation Greenback, is that it?

Mr. SAPHOS. Yes, sir. That was my former.

Senator D'AMATO. And what is your title here now in Washington?

Mr. SAPHOS. I am now Chief of the Narcotic and Dangerous Drug Section of the Department of Justice.

Senator D'AMATO. Well, that doesn't take you exactly into that, but——

Mr. SAPHOS. Because of the strong connection between narcotics and money laundering and the narcotics trade, we have placed the responsibility for money laundering issues within my section of the Department of Justice.

Senator D'AMATO. Good. So would you see if you'll work with some of the banks on that?

Mr. SAPHOS. Absolutely.

Senator D'AMATO. Great. Mr. Sun, you wanted to make an observation?

Mr. SUN. Yes. I might add that in California we had started to make moves exactly in the direction that you said. Many of the banks in California have decided not to sell, for instance, cashier's checks to noncustomers. I think they're doing that in Florida as well.

Senator D'AMATO. Yes, unless there is some kind of extenuating circumstances and various standards that that person can meet. You're not selling any money orders because the smurf isn't going to come in and say, "Give me $500 or $1,000."

Mr. SUN. The next step up from there, unfortunately, was we were intercepting smurfs at like the airport who we found had as many as 20 passbooks or bank books on them. What they have done is they've gone in and opened up accounts with $1,000 balances and then they smurf away. What banks have done in response to that, or tried to do, is require additional identification. That poses something of a deterrent to the smurf because they really do not want to leave much of an identification trail. And that is the kind of direction we are moving in really following, what you've indicated, Mr. Chairman, to try to force the money launderer to cough up more information that he or she would not really want to do and therefore have to go somewhere else.

Senator D'AMATO. Mr. Hodges, we haven't heard from you, but before we ask any other questions and I'll ask the panel to stay here if they don't have time constraints, and we'll take your prepared statement as if read in its entirety. If there are any observations that you'd like to make or any other statements to supplement your prepared text, please go ahead and do that.

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STATEMENT OF ROBERT HODGES, GENERAL COUNSEL AND EXECUTIVE VICE PRESIDENT, SOUTH CAROLINA BANKERS ASSOCIATION, REPRESENTING THE AMERICAN BANKERS ASSOCIATION.

Mr. HODGES. In the interest of your time, Mr. Chairman, I will just make a couple of points and provide my statement for the record and also the statement that we made earlier to the Senate Judiciary Committee as several of the witnesses have brought up other bills—the administration bill, for example. We would like to place our views on those bills in the record as well.

Just by way of summary, our position is very simply by saying that we support your bills very strongly. We do have some suggestions by way of clarification which we can work on with your staff and with these gentlemen here at the table.

Senator D'AMATO. Mr. Lykos is present and if you want to set up an opportunity to meet with him it would be appreciated.

LIABILITY EXEMPTIONS

Mr. HODGES. We really have only one new provision which again we will discuss with them, but basically it provides that the bank or financial institution upon discovering a failure to report would be able to report that information to the proper authorities and if having done so before being notified by those authorities, then it would be exempt from liability. This is similar to regulation Z and B provisions in some State consumer laws. We think it would encourage banks to audit their own procedures and to come forth with——

Senator D'AMATO. A good faith effort or some employee who on his own has been undertaking these kind of things finally comes to the attention of some supervisors or higherups and they immediately undertake to report this, is that the kind of situation you're talking about?

Mr. HODGES. Exactly.

Senator D'AMATO. Well, we'll certainly take a look at that.

Mr. HODGES. Other than that, we would just like to thank you, for your effort in this area. We feel these bills are far superior to some of the other proposals we've seen and we could not support them more strongly.

Senator D'AMATO. Well, thank you, Mr. Hodges.

[The complete prepared statement follows:]

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STATEMENT

OF

ROBERT H. HODGES, JR.

on behalf of

THE AMERICAN BANKERS ASSOCIATION

on

S. 571 AND S. 2306

before the

COMMITTEE ON BANKING,

HOUSING & URBAN AFFAIRS

U.S. SENATE

MAY 1, 1986

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Mr. Chairman and members of the Committee: I am Robert H. Hodges, Jr., Executive Vice President and General Counsel of the South Caroline Bankers Association. I welcome the opportunity to present the views of the American Bankers Association on S. 571 and S. 2306. The combined assets of the members of our Association comprise approximately 95 percent of the industry total. Our members range from the smallest to the largest banks, and approximately 85 percent of them have assets of less than $100 million.

Dating back to 1970, prior to the passage of the Bank Secrecy Act, we appeared before both Houses of Congress to voice our concern and our support of this legislation. The ABA understands the challenge that law enforcement officials face in attempting to combat drug trafficking and organized crime. The use of financial institutions as havens for drug money is as abhorent to our members as it is to the public in general. Financial institutions must never become an oasis for drug trafficking. Since ABA has previously testified at length on the issue of money laundering we would like to offer to this Committee our statement given to the Senate Judiciary on March 18, 1986.

Unlike the other proposed legislative solutions, S. 571 and S. 2306 focus the attention of Congress on the motivation of the drug trafficker.

The Department of the Treasury asserts that it lacks subpoena power sufficient to enforce the Bank Secrecy Act. If the Congress finds the current means of obtaining a subpoena available to the Secretary of the Treasury are inadequate to enforce the Act, we would support the expansion of the Treasury's subpoena authority as proposed.

It is as disturbing to the banking community as it is to the Congress that the Government is unable to convict individuals who are clearly using legitimate business to hide illegal monies. We believe that S. 2306

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introduced by Senator D'Amato and its companion H.R. 4573 introduced by Representative Pickle are cogent attempts to stem the evasive tactics of money launderers who avoid currency reports by making multiple transactions that are in the aggregate over $10,000.

This practice, known as "structuring" or "smurfing," allows criminals to exchange illegally derived monies for cashiers checks, travelers checks, etc. The D'Amato approach would subject persons to criminal and civil liability for causing or attempting to cause a domestic financial institution to "fail to file a (currency transaction) report", or to file the report with "a material omission or misstatement of fact" or structuring or assisting in structuring a transaction "for the purpose of evading the reporting requirements." This language will address the structured transaction problem which has forced the courts to dismiss charges against individuals who may have been involved in deliberate evasion of the Bank Secrecy Act reporting requirements.[1]

While there have been several cases that have found "structured transactions" violative of 31 U.S.C. 5313(a)[2], the confusion over the statute and its implementing regulations needs to be solved once and for all; otherwise the unjustified dismissal of charges such as that in the recent United States v. Dela Espriella[3] will continue. The Committee

[1]See United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985), United States v. Denemark, 779 F.2d 1559 (11th Cir. 1986) and United States v. Varbel, 780 F.2d 758 (9th Cir. 1986) which have all held that structuring currency transactions to avoid the reporting requirements was not a crime. In fact, the court in the Varbel case pointed out that:

> [I]f Congress or the Secretary wish to impose a reporting duty on financial institution customers, they must do so in clear, unambiguous language. We cannot impose the duty by implication.

Our Association strongly believes that S. 2306 and H.R. 4573 will remedy this unjustified result.

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is to be commended for proposing a rational solution to this confusion.

The proposal, already offered by Senator DeConcini, would complement this Committee's response to tightening the Bank Secrecy Act. On June 27th of last year, Senator DeConcini introduced S. 1385, the "Money Laundering Crimes and Disclosure Act" which deals in part with the reporting problem associated with currency transaction report exemptions. S. 1385 would amend 31 U.S.C. 5318, which gives the Secretary of the Treasury authority to "prescribe (or revoke) an appropriate exemption" by requiring the financial institution to provide to the Secretary of the Treasury (or his delegate) "a list of customers of the financial institution whose transactions have been exempted" and by further requiring the Secretary to "review and approve or revoke the list of exemptions within 90 days after the date of receipt." If the Secretary failed to notify the financial institution within the time provided, the exemption list would be deemed approved. Under a provision similar to S. 571, the Secretary would be authorized to issue summonses for purposes of the Bank Secrecy Act under the same procedures used by other administrative agencies.

[2]See United States v. Tobon-Builes, 709 F.2d 1092 (11th Cir. 1983) and United States v. Thompson, 603 F.2d 1200 (5th Cir. 1979).

[3]781 F.2d 1432 (9th Cir. 1986). Here, an individual employed persons as "runners" who each day carried large sums of currency to various banks and converted the cash into cashier's checks or other negotiable instruments. The currency was apparently derived from cocaine trafficking. The court on the authority of the Varbel decision reversed the convictions on the charges of conspiracy to violate Section 5313.

> The court concluded that "the currency reporting requirements of 31 U.S.C. 5313 do not apply to multiple transactions, each involving less than $10,000 but aggregating to make more than $10,000." 781 F.2d at 1438.

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These proposed changes would encourage frequent review of the CTR exemption lists and provide financial institutions with an incentive to internally review and update their lists. These reviews would guarantee that the lists are used only for their intended purposes: to exclude from the reporting requirements only those customers clearly intended to qualify under the regulations. The appropriate language in S. 1385 is attached to our testimony.

Finally, we would like to suggest some new language relating to an internal audit by the financial institution to the Committee. Specifically, a section such as the following should be added:

> "No liability for a civil penalty shall be imposed upon a financial institution for a violation of this subchapter or a regulation prescribed under this subchapter if such violation is first discovered by such financial institution and is promptly disclosed by such financial institution to the Secretary or in accordance with regulations prescribed by the Secretary."

This amendment provides that liability for a civil penalty will not be imposed upon financial institution for violations of the Bank Secrecy Act or regulations thereunder if the financial institution discovers such violations and promptly discloses them to the Treasury Department. The purpose of this amendment is to encourage financial institutions to audit for Bank Secrecy Act compliance and to disclose and report negligent failures to comply with the Act. Absent such a provision, financial institutions might conclude that they are better served by not auditing for compliance, since the consequences to the institution would be the same whether violations were discovered in the course of an internal audit or an external examination. Since the amendment will induce financial institutions to ensure full compliance, it will further the general purposes of the Bank Secrecy Act.

The Drug Money Seizure Act (S. 571) would increase the penalties for a

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willful violation of the Bank Secrecy Act. As proposed, the current civil penalty of $10,000 would be increased to the amount of the transaction where the violation involved a transaction reporting requirement. This provision introduces the concept of forfeiture as a penalty. The ABA has supported, and continues to support, increased penalties for willful violations of the Bank Secrecy Act. S. 571 and S. 1385 increase penalties which we believe will effectively reach the profits of the drug trafficker.

The penalties in S. 571 attach to a domestic financial institution and a partner, director, officer, or employee of a domestic financial institution. S. 2306 extends the reach of penalties to persons outside the financial institution. Under S. 2306, any person who causes or attempts to cause a domestic financial institution to fail to file a report required by the Bank Secrecy Act or to file a report containing a material omission or misstatement of fact would be subject to civil penalties in the form of the forfeiture provisions. United States coin, currency, monetary instruments, or any other interest property traceable to such instruments, coin or currency could be seized and forfeited to the U.S. Government.

We believe the forfeiture proposal presents two issues which need clarification: first, this Committee should more precisely define the extent of the reach of forfeiture; and secondly, S. 571 and S. 2306 may offer a more complete legislative solution to the problem if they are read together.

The forfeiture subsection covers funds and assets that are "traceable" to the coin or currency involved in a violation or attempted violation of the Bank Secrecy Act. The limits of this "reach" of forfeiture need to be clarified. Even though it is the intent of the proposal that no property or interest in property shall be forfeited if it can be established that

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the owner is a bona fide purchaser for value who took without notice of the violation; or if the violation was not willful, the language offers no protection or immunity to innocent sellers or innocent parties to a transaction who accept collateral that may indeed be "traceable" to tainted funds. While the Association supports the concept of forfeiture as a method of arresting the process of legitimization of illicit drug profits, we offer such support with a concern for the need to protect all innocent participants to business transactions.

Both S. 571 and S. 2306, focus on subjecting violators of the Bank Secrecy Act to civil penalties, whether inside or outside of the financial institutions. S. 571 subjects a bank and/or its personnel can be penalized for Bank Secrecy Act violations in the amount of the transaction. Under S. 2306, a person who causes a particular violation of the Bank Secrecy Act can be penalized civilly in the amount of the transaction involved. Because both S. 571 and S. 2306 amend Title 31 of the U.S.C., the criminal penalties found in § 5322 of Title 31 will not only apply to the bank and its personnel, but also to the person outside the bank. The amended Title 31 along with use of the new forfeiture provisions as set out in S. 2306, gives the law enforcement community and financial institutions an effective weapon against two elements of the drug traffic — the person and the proceeds.

We appreciate the opportunity this Committee has given to the banking community to offer our support and continued assistance in developing practical tools against the evils of drug trafficking.

EXEMPTION PROPOSAL IN S. 1385

Section 5318. Compliance and exemptions

(a) The Secretary of the Treasury may (except under Section 5315 of this title and regulations prescribe under Section 5315) —

(1) delegate duties and powers under this subchapter to an appropriate supervisory agency;

(2) require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter;

(3) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The financial institution must provide on a quarterly basis to the Secretary of the Treasury a list of the customers of the financial institution whose transactions have been exempted in accordance with the provisions of the regulations prescribed under this subchapter. The Secretary of the Treasury must review and approve or revoke the list of exemptions within 90 days after the date of receipt. Upon revocation, a financial institution shall file the usual reports as prescribed under Section 5314 with respect to any customer whose exemption has been revoked. The financial institution may consider the exempt list approved for purposed of this subchapter unless notified in writing to the contrary by the Secretary of the Treasury within the 90 day period.

Senator D'AMATO. I'm deeply appreciative of the fact that the ABA has taken this position and has not been unnecessarily defensive but has raised legitimate concerns and has played an integral part in attempting to develop some legislation that will really protect the interests of everyone, including the reputations of our financial institutions. That's most important.

I might note before we conclude that Senator Proxmire has a prepared statement that I will introduce into the record as if read in its entirety. He's also asked that we submit some questions on his behalf and I'll ask the panel to respond in writing. I would also note that on page 4 of his statement that he is a cosponsor of S. 571 and he would like to join also to be a cosponsor of S. 2306.

[The complete prepared statement of Senator Proxmire follows:]

OPENING STATEMENT OF SENATOR PROXMIRE

I think it is most appropriate to have this hearing on S. 571, the Drug Money Seizure Act and S. 2306, the Bank Secrecy Act Amendments of 1986 on May 1. For today, as we all know, is law day in the United States and these two bills are designed to increase respect for our laws and to reduce crime in our country by making it more difficult for criminals to launder their ill gotten gains through our Nation's financial institutions.

The President's Commission on Organized Crime, a very distinguished bipartisan group of judges, legislators, lawyers and scholars, has told us that "money laundering is the lifeblood of organized crime." That makes sense. If criminals cannot freely utilize their illegal booty then their incentive to engage in activities harmful to society will be diminished. That is why today's hearing is so important. We, on the Banking Committee, are attempting to craft legislation to curb money laundering—which is defined by the President's Commission on Organized Crime as the process by which a person conceals the existence, illegal source, or illegal application of income and then disguises that income to make it appear legitimate. In criminal jargon it is the process by which cash is washed so it can be used openly and cannot be traced to illegal activities.

Law enforcement officials tell us that narcotics traffickers annually conceal over $100 billion in cash from detection by the Government, and are by far the greatest users of money laundering schemes.

The principal tool now available to detect, measure, and punish money laundering is the Bank Secrecy Act. That act requires that a currency transaction report must be filed by financial institutions whenever a currency transaction is more than $10,000. It also requires that reports be filed whenever currency or monetary instruments of more than $5,000 are taken in or out of the United States. The effectiveness of the Bank Secrecy Act in curbing money laundering has been hampered by shortcomings in the act itself, which the bills before the committee today are designed to cure, and by the fact that financial institutions and their regulators have not always taken it seriously.

Just last week the House heard testimony from a former money launderer that criminals break up large sums of money into transactions of less than $10,000 to avoid the act's requirements. This man laundered money in banks in Miami on a regular basis by buying $9,000 money orders with cash from numerous banks a couple of times a week. Sometimes he went to the same teller in a given bank—and never a question was asked—no one ever reported him. He testified that hundreds of others were doing the same. This testimony and the numerous banks that have turned themselves in for violating the Bank Secrecy Act since the Bank of Boston was convicted for violating it in February 1985 make clear that the Government acting alone cannot curb the money laundering problem.

Our financial institutions must themselves realize the magnitude of this problem and help our law enforcement officials to cope with it. They cannot continue shutting their eyes to wrong doing in order to make profits for turning cash into money orders or cashiers checks or taking deposits into fictitious accounts.

Before the Bank of Boston was convicted of not filing cash transaction reports, there were 60,000 of such reports filed each month. Within 4 months after that conviction banks were filing over 250,000 cash transaction reports a month. Why does it take fear of prosecution to get some of our most respected institutions to follow the law? In that regard I note that after the Bank of Boston conviction over 60 banks or

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bank holding companies came forward to Treasury to reveal their past violations of the Bank Secrecy Act. Civil penalties have been assessed on some of these banks from amounts ranging from $112,000 to $4.75 million in the case of the Bank of America.

Of course we can give banks more incentive to help stop money laundering by strengthening enforcement of our laws and by raising penalties on banks for violating the law. We can and will press our bank regulatory agencies to improve their Bank Secrecy Act examination procedures. But banks and other financial institutions must increase their own commitment and internal control processes for these processes are the most effective mechanism for ensuring compliance with the Bank Secrecy Act.

Senator D'Amato, I am already cosponsoring S. 571 the Drug Money Seizure Act. I believe the additional measures in S. 2306, which are designed to curb money launderers who use multiple deposits of amounts less than $10,000 to evade current law, are needed and wold be delighted to be listed as a co-sponsor of that bill as well. We in Congress must stop the cancer of organized crime's drug trade, which feeds upon its ability to launder money.

Senator D'AMATO. Also, again for the record, Senator Gorton was here.

Gentlemen, let me ask you before we conclude if you have any other observations that you feel you would like to make, we certainly would like to make them part of the record today if you want to follow up in written testimony, but any observations that any of you have I think are important. Certainly they are important to me to give me a better insight into the problems and I'd be appreciative.

USE OF TOOLS AT HAND

Mr. SAPHOS. Only one. Sir, I would like to tell the Senate and the Congress that we have been using to the best of our abilities the tools that you have already given us. I was observing the two cases that Mr. Bruh used as examples of the conduct of the Internal Revenue Service in investigating criminals laundering money. Both of those cases were prosecuted under my supervision in Florida and I'd like to note that in the case of Mr. Botero, in 1980, Mr. Botero, a single individual, by corrupting three bank employees at the Landmark Bank was able to launder $54 million in a relatively short period of time, a very, very short period of time.

At the same time, Beno Ghitis was able to launder $242 million through another financial institution in a 6-month period in early 1980–81 through another institution in south Florida.

You will note in the matter of the 1984 case, however, that in order to launder a comparatively mere $17 million through financial institutions that Mr. Barrera had to hire an army of smurfs to travel all over the country. Now the same day service that Mr. Botero was giving to the doper by converting his money into the financial institutions and wiring it around the world with impunity on the same day at almost an immediate time was no longer available to the doper by 1984. He had to, at a much greater cost and overhead and security and trusting more people and entering more financial institutions—he had to hire this army of low-ranking people who flew all around the country with the companion risks of security and the risk of having an informer in the middle of their network, which happens with some degree of frequency fortunately now.

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So I would like to point out that law enforcement, with the good graces of the banking institutions who are shutting their doors to this nefarious conduct, have been making a dent—perhaps not a deadly one, but a dent—in the money laundering trade in the United States.

We do need the additional tools that you're seeking to give us and we will use them as well as we've used the tools that you've already given us.

Senator D'AMATO. Well, thank you very much, Mr. Saphos. It's very encouraging at times because I tell you, I feel like we're shoveling against the tide. I just see this avalanche. So it's nice to get a glimmer of hope, not just in a particular case but in terms of the overall progress being made in certain areas. As Mr. Knapp testified before, people are very ingenius and they're going to try to devise other schemes, but it's good to know that at least we are forcing them into a mode of conduct that makes their operation more difficult and maybe easier for us to be able to interdict and to get our own operatives within their system.

Mr. KNAPP. I just want to second Mr. Saphos' remarks and advise that we will be providing a written corrected statement for the record. I want to thank you again, Mr. Chairman, for these hearings and your support for this most important legislation.

Senator D'AMATO. Mr. Knapp, I can't underscore how important I think your support in the Justice Department on this matter is. I won't tell you about the frustrations and the fact that we go back a number of years in having introduced similar legislation that has stagnated for a number of reasons.

I am cosponsor of S. 1335. Notwithstanding my cosponsorship of it, I think that both you and I appreciate the fact that that proposal will probably attract heated, protracted debate. It will be amended a number of times. And if it finally becomes law, you and I may be long gone from our—hopefully not from this earth, but maybe from our respective positions.

And the reason I say this is because if we can't do it all, let's begin to at least make the inroads. We may not be able to drive the final nail in the coffin of illegal money laundering transactions with the legislation that you're here to testify about, but it begins to start that movement.

Mr. KNAPP. Yes; I understand.

Mr. SUN. Mr. Chairman, my final comment is directed to the fact that I come from a judicial circuit that is affected by one of the cases that you discussed, the *Varbel* case. I just recently had a couple of other cases that followed *Varbel* that were setbacks for the Government to the extent that one involved a $25 to $40 million smurf ring where we had convictions reversed. I had another case where a RICO indictment among other counts, was thrown out because of the *Varbel* case.

Speaking for the financial task force in Los Angeles, San Francisco, the entire west coast that is covered by the Ninth Circuit Court of Appeals, I can tell you that we need help and we ask the committee to move strongly on your bill, which we support wholeheartedly, and which we need out there in the field, and we look forward to any action that you can take that will help us.

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Senator D'AMATO. Well, Mr. Sun, we are pleased that you could be here to testify and you keep up the good work out there. It's not easy. You probably need a lot more assistants as well—assistant prosecutors and investigators and I think most of our large metropolitan districts face that same kind of problem, but I'll put in a pitch for you there with Mr. Knapp. He can carry it on up. And of course, they'll appeal to OMB.

MORE FUNDING NEEDED

I think if you want our criminal justice system to work and to be effective you've got to fund it, and I'll have to suggest that we're not really funding it adequately.

The other day we passed a budget resolution that may be of some help by Senator DeConcini, particularly in the area of law enforcement, and I think we have to direct our Nation's priorities and resources more cogently and in a more productive way and I think the U.S. attorney's offices throughout the various jurisdictions have a crying need in many cases for additional resources so that they can be more effective. They can do the job, but you've got to get them the resources.

I'll just let you know that there are some of us who are aware that it's not easy being out there feeling you're all alone. We understand the need for an extra two assistants, three, or four. So you keep doing that job and we'll keep trying to advocate for you back here.

Mr. Hodges, let me thank you again and the ABA for their very constructive—you know, the ABA and Al D'Amato aren't always on the same side—an understatement—as it relates to various areas, but I'm pleased to be able to say that I think that you're acting in a most responsible manner as it relates not only to these legislative proposals but as it relates to your overall position on this matter. We look forward to your continued cooperation, if you could meet with those gentlemen to outline some of your concerns and also with Mr. Lykos as it relates to the language that you suggested in the proposals before us today, I'd be deeply appreciative.

The committee will stand in recess. We'll keep the record open for an opportunity to those who wish to submit additional comments or views. The hearing is recessed.

[Whereupon, at 12:35 p.m., the hearing was recessed.]

[Response to written questions of Senators D'Amato, Mattingly, and Proxmire with additional material supplied for the record follow:]

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM
FRANCIS A. KEATING, II

Q.1 S. 571 provides summons authority to the Secretary of the Treasury to facilitate civil enforcement actions. Why is this summons authority needed and what types of financial institutions are subject to this summons authority? (i.e. What institutions other than banks?) How will the summons authority increase law enforcement efforts in this area?

A.1. The main purpose of the proposed summons authority is to facilitate review of compliance by financial institutions with the Bank Sececy Act and to assess appropriate civil penalites for non-compliance. The summons authority is particulary needed with respect to the miscellaneous, non-bank financial institutions for which Bank Secrecy Act examination responsibility has been delegated to IRS. IRS' own summons authority is limited to Title 26 matters and, consequently, IRS currently must rely on these institutions' voluntary cooperation in the examination process. With respect to banks, the summons authority would allow Treasury better to pursue non-compliance information, generally developed by bank examination agencies. As discussed below in question 2, the summons authority would complement the existing authority of bank supervisory agencies to examine for Bank Secrecy Act compliance.

Summons authority will enhance Treasury efforts to achieve full compliance with the Bank Secrecy Act. Full compliance by all financial institutions will help close the doors of legitimate financial institutions to money launderers. Full compliance also promotes maximum utility of the information collected under the Bank Secrecy Act for a wide variety of law enforcement purposes.

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The non-bank financial institutions that would be subject to summons authority under S. 571 include brokers and dealers in securities, foreign currency brokers, casinos, transmitters of funds, such as telegraph companies, and dealers in travelers checks and any other institution that comes within the regulatory definition of financial institutions.

Q.2 What types of documents are subject to S. 571's summons authority and how will your access to these documents assist your efforts to bring successful prosecutions?

A.2. Any document in the possession of a financial institution relevant to Bank Secrecy Act compliance would be subject to S. 571 summons authority. Documents obtained through the summons might assist in prosecutions to the same extent other types of summons, such as the IRS summons, lead to successful prosecutions by focusing investigative effort and assisting in the evaluation of whether a case is appropriate for criminal referral to the Department of Justice. However, the primary purpose of the summons authority is not to effect criminal prosecutions, but to improve civil enforcement of the Bank Secrecy Act. We believe that rigorous civil enforcement will lead to full compliance by finanical institutions and help close the legitimate financial community to money launderers.

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D'AMATO--KEATING

Q.3 How does the summons authority of S. 571 differ with the existing authority of bank examiners to look for money laundering activities? What are the advantages of the summons by comparison to the existing powers of bank examiners? If you do not have summons authority what are your options?

A.3. The summons authority in S. 571 complements the authority of the bank examiners to review the institutions they regulate for Bank Secrecy Act compliance. With respect to banks, we envision that we will frequently use the summons to follow up on noncompliance information developed by bank regulators.

The main advantage of the summons is that Treasury will be able to conduct an investigation focused on the Bank Secrecy Act compliance immediately. The primary mission of bank regulatory agencies is the safety and soundness of the institutions they regulate. Generally, we have to wait for a Bank Secrecy Act review until the normal examination cycle of the examiners. We cannot routinely expect bank supervisory agencies to stretch their already strained resources to do additional Bank Secrecy Act reviews except in egregious situations. If we do not receive summons authority, we must rely on the voluntary cooperation of financial institutions, or refer incomplete evidence of noncompliance to Justice for grand jury review and possible criminal action. Of course, as discussed in response to question #1, the summons authority also would apply to non-bank financial institutions, which are not examined by the bank regulatory agencies.

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D'AMATO--KEATING

Q.4 Who will examine the documents received pursuant to the summons authority provided in S. 571? Describe the manner in which you would conduct an investigation if the summons provides documents that give you reason to believe that the Bank Secrecy Act has been violated?

A.4. We have not developed any formal plan for delegation of the summons authority pending enactment of summons authority legislation. With respect to the miscellaneous financial institutions to which examination responsibility has been delegated to the Internal Revenue Service, documents would be examined by the IRS. Bank documents would be examined by the IRS, and/or by the Treasury Office of Financial Enforcement. Documents received from brokers or dealers would be examined by the Securities Exchange Commission and/or by the Treasury Office of Financial Enforcement.

Generally, if documents provided reason to believe that the Bank Secrecy Act was violated, we would then summon financial institution witnesses for further explanation. We would then evaluate whether to proceed with a civil penalty and/or criminal referral.

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D'AMATO--KEATING

Q.5 Does the summons authority as provided in S. 571 place any unreasonable document production burdens on banking institutions beyond those which they are already required to produce during the course of a bank examination?

A.5. We do not believe the summons authority would impose an unreasonable burdens on banks. It is hard to speculate how the summons might be more burdensome than what is already required during a bank examination. Treasury might require more detailed Bank Secrecy Act compliance information than an examination agency. Under the Treasury summons financial institutions could be required to provide documents or attend interviews off-site, whereas bank examiners are generally on the premises of financial institutions. Under S. 1335, if a financial institution felt a summons were overbroad or otherwise too burdensome, the financial institution could refuse to comply. Treasury would then be forced to take court action to uphold the summons. Thus, an independent tribunal would always be available to financial institutions to hear objections to the burden of summons issued by Treasury.

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D'AMATO--KEATING

Q.6 At present, financial institutions covered by the BSA do not have to file CTR's with regard to the deposits, in excess of $10,000, made by certain businesses.

a. What types of enterprises can be placed upon the exempt list?

A. 6. With respect to exemptions from CTR filing:

a. By regulation, a bank may unilaterally exempt deposits and withdrawals of retail businesses selling goods to the ultimate consumer and certain types of businesses that generally deposit or withdraw large amounts of cash, such as restaurants. All exemptions must be for amounts commensurate with the normal business of the customer. In addition, a bank may apply to Treasury for special exemptions for other types of businesses.

b. How does a bank know who to put on the exempt list so that it does not have to file a CTR?

b. A bank must be familiar with the regulations to know what kind of businesses it may not unilaterally exempt. It must also ensure that the business is of a type that can be exempted, if necessary by asking the customer the nature of its business. The regulations are clear that the granting of exemptions is discretionary with the bank. Treasury does not require that any business be exempted.

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D'AMATO--KEATING

c. Has the Treasury Department issued regulations that provide guidance to the banks in their efforts to determine whether a particular customer should or should not be included on the exempt list?

c. The current regulations are clear on when a bank must request a special exemption and when the bank may grant an exemption without a special request. The regulations do not spell out what a bank must do to make the threshold determination in granting an exemption -- for instance, how to determine whether a customer is a wholesale or retail business or a restaurant or race track and what is the appropriate exemption amount.

d. What actions can be taken if a bank puts a customer on the exempt list that should not be placed on the exempt list? Are banks subject to the same liabilities regardless of whether the inclusion of a customer on an exempt list was a careless mistake or was a willful act?

d. A customer might be put on the exempt list initially as a careless mistake. However, generally, the customer does not stay on the exempt list month after month, year after year, solely because of a careless mistake. This happens frequently because of the reckless disregard of an institution that knows the law but fails to take steps necessary to comply with the law. Systemic and pervasive exempt list problems often occur because the bank has relegated total responsibility to low-level employees with inadequate training and has an inadequate audit system or compliance controls to detect errors, either at the time the customer is placed on the list or later. As we have testified, willfulness in a civil includes such reckless disregard of the law. If reckless disregard is found with respect to the bank's exemption process a civil penalty may be assessed.

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D'AMATO--KEATING

e. What actions can a bank take to avoid liability for placing a customer on the exempt list who shouldn't be part of the list?

e. The safest action a bank can take is not to put a customer on the exempt list unless it knows that the customer qualifies under the regulations for a bank granted exmeption. If in doubt regarding the whether a type of business is eligible, it may apply to Treasury for a special exemption.

Q.7 With regard to the review of CTR's, we understand that the IRS is currently reviewing these forms and that they are several months behind. When will the government become current in its review of CTR filings? (Have them report to the Committee on their efforts to become current and the moment their review becomes current.)

A.7. The Internal Revenue Service advises that it is now current in processing CTR filing.

(Pages 8-A, 8-B, 8-C follow)

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8-A
D'AMATO--KEATING

Question 8. How are criminal prosecutions facilitated by the use of the information that is required to be filed pursuant to the BSA. Can you cite any investigations that have been generated by the filing of CTR's?

A.8. Because dealing in large sums of cash is frequently an indication of illegal activities, CTR's can identify persons connected to a criminal offense. This is particularly true in narcotics organizations where transactions are almost always conducted with cash. The CTR's are essential for identifying illegal transactions and the people conducting them.

Currency transactions patterns meeting certain criteria will initiate a lead. If no readily available explanation for the currency transactions is apparent, in-depth financial investigation is begun.

CTR's are usually only one source of information needed to piece together the activities of someone receiving income from an illegal source. Other financial information and multi-agency sources of information gathered from witnesses, surveillance and undercover activities are all required to establish evidence of a criminal violation.

The IRS is participating in 44 Financial Investigative Task Forces, investigating primarily narcotics trafficking, but other illegal activities as well. One of the standard procedures for these Task Forces is to examine suspicious CTR's.

Often CTR's provide the key information that will trigger an investigation of large scale criminal organizations. The following are some case examples:

o The filing of two CTR's identified John Romani, San Diego, California, as the purchaser of an ocean-going vessel for $240,000 in cash, and also identified $33,000 in currency deposited to his bank account. Subsequent investigation disclosed that Romani was part of a large organization smuggling tons of marijuana and large quantities of cocaine from Columbia to the United States. The organization off-loaded narcotics from a "mothership" off the coast of Southern California to smaller craft for transport to land.

The investigation of Romani lead to the investigation of his organization. One of the leaders of this organization, Joseph Kalek, purchased a house for $1,000,000. One hundred and forty-nine cashier's checks, each under $10,000, purchased from different banks in California and Hawaii were deposited to an

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escrow account for this purchase. Apparently, the transactions were conducted in this manner to avoid the CTR reporting requirements. All of the cashier's checks were purchased with cash. Additional assets purchased with cash and cashier's checks include a $1,200,000 ranch, a waterfront house in Miami Beach, lots in Hawaii, 3 helicopters, 2 ocean-going vessels, and a ski lodge at Lake Tahoe. Kolek plead guilty to income tax evasion and was sentenced to serve 5 years in prison and paid a $10,000 fine. Nine other individuals were also indicted for various tax and narcotics violations. Six have been convicted, one is unable to stand trial, and two, including Romani, are fugitives.

o A small bank near the Mexican border filed CTRs with the IRS showing that millions of dollars in currency had been deposited into one account. Investigation linked the deposits to the Jamie Araujo narcotics organization. The Araujo organization was allegedly the largest heroin distribution ring in the United States and imported 300 kilos of heroin a month from Mexico. A total of 39 currency deposits were made at the bank totalling $15,500,000. Another $16,000,000 was smuggled out of the United States to an account in a Mexican bank. Subsequently, Jamie Araujo and 17 members of his organization were indicted for income tax evasion, narcotics violations, conspiracy and Bank Secrecy Act violations. Araujo was sentenced to serve 15 years in prison and paid a $1,200,000 fine.

o Special agents in Oklahoma City discovered through CTRs that large cash transactions were made by an Oklahoma state contractor at a small bank in southeastern Oklahoma. As a result, widespread corruption by commissioners in most of Oklahoma's 77 counties was uncovered. Over 175 criminal investigations were opened on county commissioners and state contractors for conspiracy to impede the IRS and tax evasion.

o In the Sonal case, the prosecution of a money launderer was initiated by an analysis of CTR documents. In 1981, an analyst, upon review of CTRs, noticed a high volume of cash transactions through a Miami bank and alerted agents of Operation Greenback. The result was the seizure of $3.5 million in cash and $4.5 million from the Miami bank and the arrest of the owner of the Sonal, Inc., currency exchange. Additional CTR information led to the seizure of a half million dollars from a New York bank.

o An analysis of CTR documents revealed that Luis, Maria and Alvaro Pinto, were utilizing up to five branches of the same bank in Kentucky on a daily basis, to conduct transactions totalling up to $200,000. The information corresponded with information

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received by the FBI of money laundering and cocaine smuggling by the Pintos. Subsequently, an Organized Crime Drug Enforcement Task Force investigated and arrested the Pintos and seized in excess of $900,000 in assets. Seventeen others were indicted.

o In the Mireles case, an analysis of CTR's indicated that Mireles caused 18 CTR's to be filed totalling more than $2.1 million during a two-year period. Mireles used or provided variations of his name, date of birth, occupation, and driver's license in a suspicious, confusing pattern of CTR/CMIR filings. The analysis was provided to the San Diego Financial Task Force. It was later learned that Mireles conducted some of the transactions on behalf of his brother, a marijuana grower, who was a fugitive residing in Mexico. On February 28, 1985, Mireles was arrested and almost $300,000 was seized as he attempted to transport unreported monies from the United States to Mexico. This seizure led to additional monetary seizures in excess of $3.2 million. Mireles was charged jointly with another individual who failed to report the transportation of more than $1.7 million in U.S. currency into the United States from Mexico. An additional $400,000 was seized from an associated account.

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Q.9 Of the 14 banks on that list, how many of them voluntarily came forward to identify and to correct reporting failures? Will banks that have not voluntarily come forward to identify and to correct reporting failures be treated differently than those who have?

A.9. All of the banks with which Treasury has reached civil penalty agreements cooperated with Treasury in developing the scope of their liability. All came forward to Treasury as volunteers and most appeared to be in the process of developing the information necessary for a voluntary disclosure at the time that examinations uncovered compliance problems. Two of the banks came in after a critical examination by the Office of the Comptroller of the Currency where there was no evidence that the bank had undertaken an examination of compliance prior to the examination. Several other banks gave Treasury evidence that they had conducted a self-examination before or concurrently with the OCC examinations. We cannot speculate whether or how much information these banks would have disclosed to Treasury or how thorough an examination of past compliance the bank would have conducted absent an examination by the OCC.

As we have publicly announced, banks that do not come forward voluntarily will be treated more severely.

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Q.10 Regarding the banks that have voluntarily identified and corrected reporting failures, how will the imposition of hundreds of thousands in civil penalties encourage other banks to identify and correct past reporting failures? Since maximum fine for criminal violation is limited to $500,000, is it fair to assess civil fines in excess of criminal fines? If the filing of CTR's is so important, how will the imposition of these civil penalties encourage other institutions to admit voluntarily their mistakes?

A.10. Treasury was not involved in the disposition of the Bank of Boston case which resulted in a comprehensive plea arrangement that precluded civil penalties. Criminal fines and civil penalties are difficult to compare in terms of dollars because the possiblity of a prison term and the opprobrium that attaches to a criminal conviction cannot be measured in dollars.

The amount of penalties that have been assessed reflect the fact that the banks were volunteers. As we have stated publicly, non-volunteers will be treated more severely. This should act as an incentive to institutions to volunteer.

Q.11 How does the Treasury Department interpret the term "willfullness" in civil violations of the BSA - should the criminal application of the willfullness standard apply in civil actions or should a negligence standard apply?

A.11. Treasury interprets the term "willful" in a civil penalty context to mean with reckless disregard of the law or with specific intent to violate the law. We believe that there should continue to be a penalty for such willful violations, but as we have testified, we believe that a lesser penalty for mere negligent violations should be enacted. Such a provision is included in the Administration's bill.

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Q.12 If, during the performance of an internal audit, a bank uncovers a money laundering scheme involving bank employees and divulges this information to the Treasury Department, is there any good faith exemption which relieves the bank from civil or criminal liability?

A.12. We would not generally assess civil penalties against banks that have taken prudent steps to ensure that their employees comply with the law, but nevertheless have discovered Bank Secrecy Act violations by their employees in a routine audit or other timely fashion. In fact, when we recently issued a penalty against a bank that had discovered violations by an employee and referred the situation to the local United States Attorney, the activities of the dishonest employee were not included in the penalty. That is not to say that there could not be a situation where a bank's failure to supervise employees or inadequate controls allowed violations and where a penalty would be appropriate.

Q.13 S. 2306 permits the government to seize funds that have been deposited in violation of the Bank Secrecy Act. How far from the original violation does this seizure authority? In other words, to what extent are individuals, who have unknowingly received laundered funds for goods and services, exempt from the seizure provisions of S. 2306?

A.13. Funds or property in the hands of individual who have unknowingly laundered funds are not subject to forfeiture. The bill provides that a person may raise the defense to forfeiture that he or she is a bona fide purchaser for value without notice of underlying Bank Secrecy Act violation.

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Q.14 Some criticism exists regarding the Treasury Department's enforcement of the BSA. These critics claim that the large penalties assessed against banks that have voluntarily come forward to rectify prior reporting deficiencies may have caused some financial institutions to refrain from voluntarily identifying and reporting past deficiencies, thereby depriving the government of useful information. Moreover, they claim that the government should focus more of its limited resources on institutions and individuals involved in genuine money laundering and other illicit activities rather than on recurring, technical reporting deficiencies made by a number of law-abiding banking institutions. Could you please respond to these criticisms and detail your efforts, if any, to detect and prosecute genuine money launderers?

A.14. We believe that universal compliance with the Bank Secrecy Act is essential to assure the maximum use of the required information and to fulfill our Congressional mandate under the Act. Rigorous enforcement of the Bank Secrecy Act, including the imposition of substantial, publicly announced civil penalties, where appropriate, serves the purpose of assuring compliance. Since the publicity surrounding the Bank of Boston case and the imposition of many civil penalties by Treasury, compliance has improved dramatically as evidenced by the upsurge in CTR filing.

The assessment of civil penalties against financial institutions for past non-compliance in no way detracts from Treasury efforts to detect money launderers which have been described to you in the testimony of the Internal Revenue Service Criminal Investigation Division. The assessment of penalties and the attendant publicity is an important complement to the fight against money laundering. Heightened awareness of the requirements of the Bank Secrecy Act and improved compliance should go a long way towards to closing the legitimate financial community to money launderers.

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Q.15 The reporting deficiencies that form the basis of the Treasury Department's publicly announced civil penalties or settlements appear to relate to transactions by established bank customers, including airlines, charitable organizations, and retail sellers or services. It also appears that these transactions involve the shipments of currency by a bank to its correspondent bank for its own account, where no customer is involved. Isn't it true that there are ordinary and routine transactions involving legitimate bank customers? If so, isn't it true that we are being misled that these transactions relate to instances of money laundering or other illegal activity?

A.15. Whether the transactions on which penalties have been based, including the transactions with foreign correspondent banks, appear to be ordinary and routine transactions, is not the central issue. The important point is that the non-reported information was required by the Bank Secrecy Act and failure to report it deprived the Government of potentially useful law enforcement information. The purpose of the Act is not merely the detection of money laundering connected with drug-related transactions. One of the primary purposes for the Act is the collection of information useful for tax enforcement, whether or not related to illegal source income. Treasury has not misled anyone concerning the degree to which transactions on which penalties have been based may be related to money laundering or other illegal activity. A review of Treasury's recent press releases announcing penalties will confirm this. (Copies attached.) Penalties have not been imposed for violations where the unreported transaction arguably could have been exempted had the financial institution made a timely application for an exemption. Such would be the case with scheduled airlines, charitable organizations and many retail sellers of services with regular cash transactions.

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Q.16 Three recent appellate decisions have criticized the Treasury Department's Bank Secrecy Act regulations as being ambiguous or inadequate in properly notifying individuals and banks of their reporting obligations under the Act. What is the Treasury Department doing to clarify the Bank Secrecy Act regulations in order to fully apprise financial institutions of their reporting obligations under the Act?

A.16. The question somewhat mischaracterizes the holdings in these cases. The courts held that the regulations and existing statutory authority were inadequate to sustain prosecutions for various money laundering schemes by individuals designed to structure transactions to avoid the reporting requirements of the Act. For instance, in United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985), the court noted that the regulations were silent on the propriety of a customer's conducting multiple transactions to avoid reporting. The decisions were not general indictments of the regulations as being ambiguous or inadequate with respect to the obligations of legitimate financial institutions.

Treasury has developed a substantial proposed regulation revision package, which should be published in the next month or so. One of the proposals is to incorporate in the regulations the instruction on the Currency Transaction Report that a financial institution must aggregate all transactions for a customer of which it is aware for a given day.

Enactment of S. 2306 will clarify that individuals who structure transactions to avoid the reporting requirements are liable under the Act.

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Q.17 In authorizing the imposition of penalties for violations of the Bank Secrecy Act, Congress specifically required a showing of willfulness -- knowledge of the law and the specific intent to violate it. Many of the reporting deficiencies that form the basis for these publicly announced settlements appear to involve clerical errors or good faith, but erroneous interpretations of Treasury's Bank Secrecy Act regulations. Other violations resulted from inaccurate advice received from agents of the federal government, including the federal bank examiners. How can these reporting omissions be considered "willful" by the Treasury Department? Is the Treasury Department ignoring the Congressionally mandated standard of willfulness in assessing these penalties?

A.17. The response to this question is similar to the response to 6.d. above. Willfulness is not found from the fact that one employee made a "good faith" mistake or misinterpretation of the law. Willfulness is derived from the reckless disregard of the institutions that knew of the law and failed to take the requisite steps to understand the law and assure compliance with it.

No penalties have been imposed on the basis of mere clerical errors. Nor has Treasury imposed penalties where a financial institution could document reasonable reliance on an appropriate federal official, including bank examiners. However, in our view banks may not rely on the failure of examining agencies to uncover noncompliance as an exoneration of bank procedures. It is the responsibility of banks to implement adequate procedures, including internal audit procedures to ensure that they are complying with the Act.

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Q18 The average settlement of these penalty actions has been approximately $775,000, well in excess of the maximum statutory fine mandated by Congress for willful and deliberate violations of the Bank Secrecy Act that are conducted as a party of a pattern of illegal activity. In light of the amounts of these publicly announced settlements, are you suggesting that these reporting omissions are more serious and heinous than instances of criminal and willful money laundering? Are these penalties misleading the public and the Congress as to the severity of these reporting omissions when compared to instances of criminal money laundering?

A. 18. We are not suggesting that the civil cases are more serious than the criminal cases. Criminal fines and civil penalties are difficult to compare in terms of dollars because the possibility of a prison term and the opprobrium that attaches to a criminal conviction cannot be measured in dollars.

Q.19 As a result of these civil settlements, approximately 46,000 Currency Transaction Reports have been back-filed by these 16 banks, adding to the significant back-log of CTRs at the IRS processing center. Have there been any arrests, indictments, or convictions that have resulted from the information derived from these reports? What types of information needed for law enforcement purposes can possibly be gained from the reporting of routine, ordinary and legitimate currency transaction?

A. 19. The full utility of the late-filed information is not known. All of the information requested to be late-filed was of the type that Treasury believes would have law enforcement utility. The question seems predicated on the assumption that all information required under the Bank Secrecy Act is collected directly for the prosecution of criminal activity such as drug crime. Of equal importance is the use of the information for tax enforcement and for tracking the international flow of currency. Many of the "ordinary business" transactions have been the subject of penalties were of potential law enforcement use for these purposes.

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In cases where there would be no significant practical utility to the information, such as reports of transactions with exemptable businesses that were not placed on exempt lists, we have not imposed penalties and have not required late-filing.

In some cases, banks have not been able to create and backfile reports of transactions that would have had potential law enforcement utility. We will never know the full extent of lost investigatory leads because of the non-filings.

Q.20 In enacting the Bank Secrecy Act in 1970, Congress specifically provided and intended that the Treasury Department would promulgate procedural guidelines setting forth the steps that banks were to take to be in compliance with the Act. Has the Treasury Department ever promulgated such guidelines? If not, how can the Treasury Department assess huge civil fines against banks that inadvertently failed to comply with the reporting requirements of the Act?

A.20. Treasury has never exercised its authority under 31 U.S.C. § 5318 "to require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance." Treasury's authority to assess civil penalties under 31 U.S.C. § 5321(a) for willful violations is clearly not contingent on promulgation of such procedures. Again, we believe that each bank is responsible to adopt procedures to ensure compliance with the law.

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Q.21 In 1983, the Treasury Department issued guidelines governing the determination of the amounts of penalties to be assessed for willful violations of the Act. These guidelines require an analysis of several qualitative and one quantitative factor. However, the Treasury Department's penalties seem to be based solely on the number of back-filed CTRs required to be filed. Why has the Treasury Department failed to follow its own guidelines in assessing these penalties? Has the Treasury Department sought the recommendations of the bank regulatory agencies, required by the Department's guidelines, in making these determinations?

A.21. The guidelines referred to in the question were for the referral to Treasury of potential penalty cases by agencies to which Treasury has delegated enforcement authority under the Act. The guidelines have nothing to do with the determination of the amount of penalties. It is the sole responsibility, under the regulations, of the Assistant Secretary (Enforcement) to determine the amount of the penalty. As a practical matter, most penalty cases are referred by examining agencies. However, the Assistant Secretary has never delegated his authority for penalty assessment nor is any penalty recommendation by an examining agency required prior to a penalty assessment.

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Q.22 In recent discussions about amendments to the Bank Secrecy Act, I became concerned about the level of cooperation between the banking industry and the Treasury Department to assure full technical compliance with the Act. Apparently, numerous ambiguities in the existing reporting regulations and the lack of published Bank Secrecy Act compliance guidelines have made it difficult for banks to develop effective reporting procedures for large cash transactions. What efforts are being made to publish such guidelines and to assure compliance with the Act in general?

A.22. We do not believe that ambiguities in the regulations or lack of compliance guidelines caused banks to have ineffective Bank Secrecy Act compliance programs. Rather, the direct cause was the failure of financial institutions to devote adequate resources and management attention to good compliance, including institution of an efficient centralized compliance organization and adequate audit procedures and legal review.

Banks always have been able to contact Treasury with questions regarding the regulations. Nevertheless, we recognize that communications with the financial institution community can be improved. We have begun discussions with the Bank Administration Institute to exchange ideas on improved communication and dissemination of Treasury policy. We are also considering publication of a pamphlet to be distributed to all banks on customer exemption procedures.

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Q.23 Could you please identify the non-bank financial institutions that are subject to the summons provisions of S. 571?

A.23. As noted in the response to question 1 above, the non-bank financial institutions that would be subject to summons authority under S. 571 include brokers and dealers in securities, foreign currency brokers, casinos, transmitters of funds, such as telegraph companies, and dealers in travelers checks and any other institution that comes within the regulatory definition of financial institutions.

Q.24 Do the individuals who actually make the deposits - the smurfs - have any idea that they are assisting criminal activity through the laundering of funds?

A. 24. Smurfs have testified before Congress that they did not specifically know about the illicit activity that produced the launderers funds. We cannot generalize about what knowledge smurfs have regarding the activity. In prosecutions of smurfs under the Bank Secrecy Act, the Government does not have to establish knowledge of the source of the funds to sustain such a prosecution -- only knowledge of the reporting requirements.

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Q.25 Some legislative proposals lower the amount for which a CTR must be filed from $10,000 to $3,000. Would such a limitation attack smurfing in a more effective manner than the provisions of S. 2306?

A. 25. We are not aware of any legislative proposal that would lower the reporting amount to $3,000. A proposal has been introduced by Congressman Torres that would impose an extensive recordkeeping requirement for cash transactions at the $3,000 level. It has been estimated that that would affect some 64 million transactions a month. We believe that the burden to financial institutions would be out of proportion to the law enforcement utility of the additional reports.

We would favor a reporting requirement at the $3,000 level only for certain transactions specifically designed to curtail smurfing activities, namely the purchase of monetary instruments (bank checks, travelers checks, cashier's checks) with cash. We are considering such a requirement in the regulatory package mentioned in 16 above.

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Q.26 How essential to the detection of money laundering transactions are the provisions of S. 571 and S. 2306 that concern transactions with foreign banks?

A. 26. S. 571 provides for the first time a civil penalty on individuals who do not report foreign bank accounts pursuant to 31 U.S.C. § 5314 and the regulations thereunder. Up to now Treasury can only impose such a penalty on a financial institutions under 31 U.S.C. § 5321. This is clearly a deficiency in the law. The penalty should improve compliance by individuals with the reporting requirement. The existence of foreign accounts is only one of many factors considered in financial investigations.

Q.27 At present, the individual banks have to file for an exemption from the reporting requirements of the Bank Secrecy Act. Shouldn't we also require the depositor to sign a statement before an exemption is granted in which the depositor makes representations regarding the nature of his business and the source of the funds?

A. 27. The suggestion in this question is a good one and deserves serious consideration. In fact, we are considering including a requirement that customers attest to exemption information in our new regulatory package described in the response to question 3 of Senator Proxmire's questions.

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Q.28 Assuming S. 2306 is not enacted, does Treasury have the authority to promulgate regulations to discourage smurfing and, if so, have any regulations been contemplated?

A. 28. Treasury does have extensive regulatory authority under the Bank Secrecy Act including the authority to impose reporting requirements on individuals. The only new anti-smurfing regulatory measure now contemplated is described in part in 25 above. We believe that directly making structuring to avoid the reporting requirement subject to the sanctions of the Bank Secrecy Act as is proposed in S. 2306 is the best guarantee that prosecution for smurfing activities will be sustained.

Q.29 In recent discussions about amendments to the Bank Secrecy Act, I became concerned about the level of cooperation between the banking industry and the Treasury Department to assure full technical compliance with the Act. Apparently, numerous ambiguities in the existing reporting regulations and the lack of published Bank Secrecy Act compliance guidelines have made it difficult for banks to develop effective reporting procedures for large cash transactions. What efforts are being made to publish such guidelines and to assure compliance with the Act in general?

A. 29. This is the same question as 22 above.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM
BRIAN BRUH

Question (1):

I am concerned about the impact of money laundering operations on the collection of federal income taxes. Do you have any estimate of the amount of federal taxes that go unpaid as a result of money laundering schemes?

Response:

We do not have any estimate of the amount of federal taxes that go unpaid as a result of money laundering schemes. However, in order to aid the Committee we would like to point out the following:

a) A report prepared by Alt Associates, Inc. titled Unreported Taxable Income from Selected Illegal Activities (September 1984), prepared under contract for the Internal Revenue Service, estimated that approximately $47 billion of income from illegal activities is unreported for tax purposes. Of this total, $27 billion was believed to come from narcotics trafficking.

b) Confidential analysis performed by several law enforcement agencies and the intelligence community estimate income of $50-75 billion being generated from the sale of narcotics.

c) The House Select Committee on Narcotics Abuse and Control, Annual Report for the Year 1984, H.R. Rep. No. 1199, 98th Cong. (Jan. 8, 1985), estimated the "value" of the narcotics trade to be $110 billion.

d) In a study published in July of 1983, the IRS estimated that lost tax revenue from the legal sector was approximately $81.5 billion for the 1981 year.

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We believe that a large amount of the unreported income in the illegal sector is, in fact, laundered through one form or another. Furthermore, our investigations have disclosed that money laundering is used to disguise unreported income which is derived from legal sources as well, but again we do not know how much of it is laundered. Finally, we would like to also point out that there is no agreement among the various agencies as to the total amount of income generated from the sale of narcotics as evidenced by the aforementioned studies in this area.

Question (2):

Could you explain how S.2306 expands the IRS' existing seizure and forfeiture authority and explain why an expansion of this authority is needed?

Response:

S.2306 grants IRS the authority to seize and forfeit property traceable to CTR (Title 31) violations. Currently, IRS seizure and forfeiture authority is limited to property involved in Title 26 violations. Under the proposed bill, the event which triggers the forfeiture power (a CTR violation) is different from that which currently triggers an IRS forfeiture under Title 26 (a tax violation). Therefore, Title 31 forfeiture authority does not expand our current limited authority to perform Title 26 forfeitures (See 26 USC Sections 7301 to 7304).

Forfeiture authority for CTR violations is necessary to inhibit the flow of illicit funds through financial institutions. As the actual case examples in the written testimony demonstrate, a single professional money launderer is currently able to channel millions of dollars of illicit currency into financial institutions from which the funds can be freely transferred to almost anywhere in the world. In order to halt this free flow of funds, we must send a message to drug dealers, money launderers

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and other affluent criminals that laundering money through financial institutions means risking forfeiture of the funds to the government. This sanction is also necessary in order to prevent financial institutions from being unwitting but key participants in hiding the fruits of illegal activities and thereby aiding the criminal.

Existing Title 26 seizure authority has not been effective in a money laundering context. Title 26 jeopardy/termination assessments (IRC Sections 6851, 6861, and 6867) are potentially useful; however, they require proof of potential unreported taxable income before property can be seized (unless unclaimed currency is involved - Section 6867), and this proof is difficult absent evidence of an income source. Moreover, only the tax deficiency, a maximum of 50 percent, can be collected.

Question (3):

The Bank Secrecy Act requires that certain types of businesses other than banks file CTRs. Are there any other types of government forms that must be filed with government agencies, such as the IRS, by other legitimate businesses that may be unwittingly used to launder funds?

Response:

A recent amendment to the Internal Revenue Code, Section 6050I, requires the business recipient of more than $10,000 in currency to report the identity of the payer and other information to the IRS. The section is effective for cash payments received after 1984. This includes such businesses as car dealers, yacht brokers, escrow companies, precious metal and stone dealers, mortgage companies and others. This information is reported to the Service on a report Form 8300, Cash Received in a Trade or Business of More Than $10,000, and processed by our Detroit Data Center.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM
JAMES KNAPP and BRIAN SUN

Q. 1. In several recent decisions, the federal appellate courts for the first, ninth and eleventh circuits have held that structuring currency transactions to avoid the reporting requirements under the Bank Secrecy Act did not violate 18 U.S.C. section 1001. (18 U.S.C. section 1001 prohibits the concealment of a material fact by trick, scheme or device from the government).

a) What were the rationales used by these courts in finding that 18 U.S.C. section 1001 did not apply to these currency structuring transactions?

A. 1. a) 31 U.S.C. 5313 is the provision of the Bank Secrecy Act which requires financial institutions to file Currency Transaction Reports (CTRs) on currency transactions of more than $10,000. The United States has been able to apply the concept of vicarious liability, under the conspiracy statute (18 U.S.C. 371) and the aider and abettor statute (18 U.S.C. 2), to prosecute individual money launderers under this provision. Several recent court decisions, however, have severely limited the reach of these types of prosecutions.

Individual liability under the Bank Secrecy Act was first clearly sanctioned in United States v. Tobon-Builes, 706 F.2d 1092 (11th Cir. 1983). In Tobon-Builes the defendant, accompanied by a female companion, went to ten different banks in Northern Florida within a six-hour period. At each bank, the defendant and his companion each made virtually identical purchases of cashier's checks, with the individual purchases being for less than $10,000, but the total of each pair equaling approximately $18,000. The couple concealed the fact that they were together by entering the banks separately and going to different tellers. Id. at 1094. The defendant was convicted of concealment under 18 U.S.C. 1001 on a theory that he concealed the transfer of currency transactions exceeding $10,000 in order to avoid the institutions' filing of currency transaction reports. He appealed, arguing that under 31 U.S.C. 1081 (the predecessor statute to 5313) he

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was under no legal duty to report the transactions. Without such a legal duty to report, he argued, he could not be guilty of concealing the existence of the transactions. The Eleventh Circuit found that Tobon-Builes's liability stemmed, not from his duty to file, but rather from his causing the banks to fail to file the required reports. Id. at 1098-1099. A statutory basis for this holding was found in 18 U.S.C. 2(b), which provides that one who "willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." Id. at 1099.

The court found that the defendant and his companion were acting as a single person under the statute because the female was acting as the defendant's agent. It therefore concluded that the defendant was involved in at least ten separate "transactions in currency of more than $10,000," and that this involvement triggered an obligation on behalf of the banks to file CTRs. Id. at 1098. The court concluded that, by operation of 18 U.S.C. 2(b), the defendant's criminal intent to cause a concealment was joined with the bank's duty to report the transactions and failure to do so, and that the combination of the two formed the elements of actionable concealment under 18 U.S.C. 1001. Id. at 1101. The opinion in Tobon-Builes contains some expansive language to the effect that the substance of a transaction will prevail over its form. The government has attempted to use this language to support an expansive interpretation of "transaction" under the reporting requirements, but recent Courts of Appeals decisions have rejected this interpretation.

In United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985), the First Circuit considered the question of whether "structuring" a transaction in such a way as to circumvent the reporting requirements of 31 U.S.C. 5313 triggered the application of criminal sanctions. Defendant

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Anzalone purchased a number of checks from the Haymarket Cooperative Bank over a period from November 13, 1980 to December 1, 1980. Although the checks totaled over $100,000, no individual check exceeded $10,000. 1/ All of the checks were payable to the same stock brokerage firm, and were used to pay for bonds purchased to the account of the wife and mother of a public official. The bank did not file CTRs concerning any of the purchases. The government argued that these purchases constituted, in reality, a single "structured" transaction, that the transaction had been structured in order to avoid the filing requirement, and that the defendant's failure to inform the bank of the "structured" nature of the transaction constituted an illegal scheme to cause the bank to fail in its duty to report it. Id. at 679.

The court rejected this argument. Instead, it accepted the defendant's contention that the statute provided no notice that structuring a transaction to avoid filing was illegal. It concluded that the statute imposed no duty upon the defendant to inform the bank of the structured nature of the transaction. Id. at 682. Moreover, the court found that there could be no liability under 18 U.S.C. 2 because the bank itself had no duty to report the purchases. Id. at 682-683. The Anzalone court concluded that structuring the purchases to avoid the filing requirement constituted "avoidance" rather than illegal

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1/ On November 13, the defendant purchased three checks totalling $25,000. The subsequent purchases were all on separate dates. The court seems to ignore the November 13 purchases in its discussion, and instead seems to base its holding on the (incorrect) fact that on no one day was the $10,000 threshold, triggering the obligation to file CTR, ever met. Therefore the court seems to simply ignore rather than to reject the possibility that these purchases constituted a single transaction. See 766 F.2d at 683 (Aldrich, J., concurring).

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evasion. Therefore, such conduct did not violate the terms of 18 U.S.C. 2 or 1001, nor did it violate the reporting provisions of Title 31. Id. at 683.

Anzalone was followed by the Ninth Circuit in United States v. Varbel, 780 F.2d 758 (9th Cir. 1986). In Varbel, the defendants used a number of structured transactions to move currency from the United States to a dummy corporation in the Cayman Islands. The defendants, in order to avoid the filing requirements, purchased six cashier's checks from six different banks over a two-day period. No single transaction in currency at any bank exceeded $10,000. Id. at 759-760. The defendants were convicted of conspiring to conceal, and concealing, material facts in violation of 18 U.S.C. 2, 371, and 1001. Id. at 760.

The Ninth Circuit reversed the convictions, finding that, because the transactions involved amounts less than $10,000, no CTRs were required. Moreover, the court agreed with the Anzalone decision that the defendants had no duty to inform the banks of the structured nature of the transactions. The court agreed that the application of criminal sanctions to these activities would violate due process. Id. at 762. As the defendants were under no duty to disclose the nature of their transactions, they could not be held liable under 18 U.S.C. 1001. The court further reasoned that, as the banks committed no crime by failing to file CTRs, the defendants did not cause the commission of a crime, and could not be found liable under 18 U.S.C. 2. 2/

2/ The defendants' convictions for wire fraud (18 U.S.C. 1343) were also dismissed. The court reasoned that, because the defendants had not illegally concealed matter within the jurisdiction of the IRS, the wire transfer of the funds from the Cayman Islands to Phoenix could not constitute furtherance of a scheme to defraud the IRS.

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The Eleventh Circuit came to a similar conclusion in United States v. Denemark, 779 F.2d 1559 (11th Cir. 1986). After a title company refused to accept $155,000 in cash for the purchase of a house, defendant Denemark purchased fourteen cashier's checks in the amount of $9900 from fourteen different banks in the Tampa area. He then took the checks to the title company to tender them for final payment on the house. Id. at 1560-1561. The defendant was convicted of having conducted fourteen transactions in order to prevent the banks from being required to file CTRs, in violation of 18 U.S.C. 1001. Id. at 1560. The court found that the defendant engaged in no transaction involving currency of more than $10,000, and, therefore, that none of the transactions required the banks to file CTRs. Because the banks were not required to file CTRs, the defendant could not be prosecuted for causing the banks to fail to perform an act which they had no legal obligation to perform. Moreover, the court refused to apply a "substance-over-form analysis" to aggregate the fourteen transactions, because none of the transactions took place in the same "financial institution." 3/

The Ninth Circuit relied on its decision in Varbel to reverse convictions under 18 U.S.C. 371 and 1001, as well as 31 U.S.C. 5313 and 5322, in United States v. Dela Espriella, 781 F.2d 1432 (9th Cir. 1986). As in Varbel, the court found that no CTRs were required where the individual transactions, at separate banks each involved less than $10,000. Moreover, because the individual transactions involved were perfectly legal, there could be no violation of 18 U.S.C. 2, 371, or 1001. The court, therefore, reversed

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3/ The court explicitly distinguished the case in which a person conducts multiple conversions in several branches of a single bank in a single day. Id. at 1563.

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the convictions of all of the defendants except defendant Rondero. Id. at 1435. The court affirmed two of the counts against defendant Rondero, holding that he could be convicted as an aider and abettor of a narcotics offense for his role as a money launderer, and that he could be found to be a financial institution for purposes of 31 U.S.C. 5313. 4/ He, therefore, could be held liable for failure to file CTRs. Id at 1436-1437.

The most recent Eleventh Circuit decision in this area is United States v. Giancola, No. 84-3861 (11th Cir., decided March 12, 1986). In Giancola, the court addressed the issue reserved in Denemark, whether several transactions made on the same day with different branches of the same bank require the bank to file a CTR. The Denemark court analogized the case to Tobon-Builes, and found that, as in Tobon-Builes, the exchanges in different branches really constituted a single transaction. 5/ Because the court found that this triggered an obligation on the part of the

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4/ The court cited United States v. Goldberg, 756 F.2d 949, 954 (2d Cir.), cert. denied, 105 S.Ct. 2706 (1985), for the principle that the term "financial institution" was to be construed broadly, consistent with the purposes of the statute, and that a money launderer could fall within the purview of the term. See also, United States v. Mouzin, No. 83-5145 (9th Cir., decided March 18, 1986) (defendant's transfers of currency between Colombia and the United States and among the states in an ostensibly legitimate business venture were sufficient to qualify her as a "non-bank" financial institution under 31 U.S.C. 1059 (now 31 U.S.C. 5313 and 5322), and this inclusion was consistent with congressional intent).

5/ The court examined the statutory definition of a financial institution and concluded that a bank, rather than its branches, was a financial institution for the purposes of the reporting requirements. Therefore, multiple cash transactions at different branches of the same bank, like multiple cash transactions at a single branch, require the filing of a CTR if they total more than $10,000. The Giancola court distinguished Denemark on the basis that the transactions in Denemark were at different banks, and therefore could not be aggregated as a single transaction within a financial institution under the statute.

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bank to file a CTR, the court applied the vicarious liability concept of Tobon-Builes and affirmed the defendants' conviction for conspiracy to defraud the United States under 18 U.S.C. 371.

In review, we can see that the Anzalone/Varbel line of cases creates two major gaps in the provisions of 31 U.S.C. 5313 that seriously impede the use of that statute (and those statutes in Title 18 which use 5313 as a base) as a meaningful weapon against money launderers. First, these cases hold that the duty to report currency transactions created by 5313 is limited to financial institutions, and it cannot constitutionally be transformed into a duty for an individual customer to disclose the structured nature of a transaction, at least as long as the structuring does not cause a bank illegally to fail to file a CTR. Second, the courts have refused to interpret broadly the definition of transaction in currency, and have, therefore, refused to aggregate multiple transactions encompassing more than one bank, or spanning a period of days.

Q. 1. b) What is the current disposition of the cases that have found that 18 U.S.C. section 1001 does not apply to structuring currency transactions?

A. 1. b) Of those cases decided by the Courts of Appeals holding that 18 U.S.C. 1001 does not apply to "structuring" currency transactions (as described in detail, supra), all but one - United States v. Dela Espriella, 781 F.2d 1432 (9th Cir. 1986) - are final. In Dela Espriella, the Government has filed a petition for rehearing before the en banc Ninth Circuit Court of Appeals. In our petition, we have asked the entire Ninth Circuit to review the panel's decision in light of the fact that several of the underlying "structured" transactions (where the full amount of the transaction was split into multiple subtransactions of less than $10,000) were conducted on the same day in different branches of the same bank, which is a different factual

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situation from the facts in United States v. Varbel, 780 F.2d 758 (9th Cir. 1986) (transactions involving different banks on different days), which was cited as controlling in the panel's decision in Dela Espriella.

Q. 1. c) How prevalent is the practice of structuring currency transactions to avoid the reporting requirements of the Bank Secrecy Act?

A. 1. c) This question is one which we can answer with only a minimal degree of certainty. Although we have been advised that the Internal Revenue Service had over 100 pending cases involving "structuring" operations that they were investigating prior to the adverse court decisions noted above, it is probably true that many "structuring" operations have been successful in ensuring that currency transaction reports were not filed and that the transactions were not sufficiently suspicious to cause banks or bank employees to take any action to bring these matters to the attention of federal authorities.

In instances where banks have volunteered information on suspicious cash transactions under $10,000, we have been able to see instances of "structuring" that would otherwise have gone unnoticed. We have also been advised that the Securities and Exchange Commission has reported to the Department of the Treasury several instances in which customers have made multiple cash deposits under $10,000 over a week's time with the design to make a single purchase of stock valued at over $10,000.

With no "victim" to report these offenses, it is difficult to accurately state the number of offenses involved. Still, there is no reason to believe that these discovered instances are not just the tip of a massive iceburg of "structured" currency transactions. And with the court opinions that state that this "structuring" activity is not a crime, we conclude that this conduct will only become more prevalent in the future.

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Q. 1. d) Does section 1 of S. 2306 provide prosecutors with the means to prosecute successfully those who attempt to evade the bank secrecy laws by structuring currency transactions?

A. 1. d) Section 1 of S. 2306 should, to a great extent, overcome case law (see response 1. a), supra) which disapproves of "structured" transaction prosecutions. As previously suggested, these cases are explainable, in part, owing to a perceived lack of a "duty" to report cash transactions imposed by the Bank Secrecy Act upon bank customers. Section 1 of S. 2306 simply and directly makes it a criminal offense to structure a currency transaction 6/ for the purpose of evading the reporting requirement. This section will operate in concert with certain anticipated changes in 31 CFR Part 103, the regulations implementing the Bank Secrecy Act, which we understand will give an expanded definition to the term "transaction in currency." However, Section 1 of 2306, by itself, should significantly tighten up the law proscribing structured currency transactions.

Q. 1. e) Does section 1 of S. 2306 impose any unreasonable burdens upon the institutions required to file currency transaction reports ("CTR")?

A. 1. e) No. The CTR filing duty of domestic financial institutions should remain the same as it currently is.

Q. 1. f) Does S. 2306 adequately protect innocent parties who may inadvertantly engage in a structuring transaction from prosecution? How does S. 2306 avoid the unintended prosecution of these individuals?

A. 1. f) S. 2306 requires proof beyond a reasonable doubt that the purpose of the "structured" aspect of a currency exchange was to evade the reporting requirements of the Bank

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6/ As was suggested during my May 1, 1986, testimony, the word "transaction" as it appears in Section 1 should read "transaction in currency."

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Secrecy Act. It is this requirement which shields innocent conduct from prosecution.

Q. 1. g) Before the decision to prosecute is made, wouldn't you have to determine that a series of structuring transactions has occurred? How would this be determined since the financial institution would not have to file any CTRs - what evidence of structuring could you obtain? How does the Right to Financial Privacy Act affect your ability to receive relevant evidence of structuring transactions?

A. 1. g) Any decision to prosecute an individual for "structuring" a currency transaction in violation of Section 1 of S. 2306 would require proof of the components or series comprising the overall transaction. Violations related to the structuring of transactions would be proven through evidence surrounding the structuring itself, such as the purchase of cashier's checks made payable to fictitious payees, or proof that persons acting in concert broke down a larger sum of cash into smaller amounts which were later recombined in a single account or monetary instrument. The evidence would also necessarily require proof beyond a reasonable doubt that the purpose of the "structuring" was the evasion of the reporting requirements of the Bank Secrecy Act, and not some legitimate purpose.

The Right to Financial Privacy Act, at 12 U.S.C. 3403(c), permits, but does not require, financial institutions to notify government authorities that the institution, or one of its employees or agents, has information which may be relevant to a possible violation of law. While we believe that Congress intended by this provision to permit financial institutions, without giving a customer prior notification, to alert government agencies that criminal conduct was afoot, this provision suffers from a number of shortcomings which serve to defeat the intended congressional purpose. In the first instance, the disclosure permission granted by 3403(c) is thwarted by

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certain states' statutes which prohibit such disclosure. Moreover the RFPA is silent as to whether the institution may disclose specific account information related to the violation prior to customer notification and prior to court process, or whether the institution is merely permitted to disclose to the government that it possesses information which may be relevant to a possible violation of law.

The operation of state law and the ambiguities of 3403(c) not only operate to reduce or qualify voluntary information disclosures from financial institutions regarding the existence of evidence of criminal conduct, these factors also operate to place financial institutions in an awkward position. Financial institutions may wish to come forward with information, but the federal law is not at all that clear as to what type of information can be disclosed. Moreover, state and federal law may authorize a lawsuit by the bank customer if the institution guesses wrong.

Clearly, this type of situation compromises all federal efforts to collect information related to the commission, or possible commission, of a number of criminal offenses, including the structuring of financial transactions.

The Administration's "Money Laundering and Related Crimes Act," S. 1335, would help to remedy this situation. First, it would amend the RFPA to permit financial institutions to disclose to federal authorities, prior to customer notification, the specifics, including the relevant documents, related to suspected violations of the Controlled Substances Act, the Bank Secrecy Act, and any possible violation of any law relating to crimes against financial institutions or supervisory agencies. Moreover, S. 1335 would preempt any state law imposing a more restrictive disclosure provision. Finally, S. 1335 would amend the Federal Rules of Criminal Procedure to permit federal courts to issue orders prohibiting a financial institution from

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notifying its customers of the existence of a subpoena for customer account information if the court determines that notification would result in the destruction of evidence, intimidation of a witness, flight from prosecution, or present a threat to the safety of any individual. Moreover, a financial institution which received such an order would be protected from subsequent suit should an account holder attempt to bring an action against the institution predicated upon the institution's disclosure or subsequent non-notification to the customer.

Q. 2. Do any provisions of S. 2306 increase the liabilities of a financial institution beyond those presently allowed by law?

A. 2. Section 3 of S. 2306 permits the Secretary of the Treasury to impose a civil fine upon a financial institution (excluding a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission) when such financial institution willfully violates Section 5313(a) of the Bank Secrecy Act. The amount of the possible civil fine provided for in Section 3 could increase potential civil liability by permitting a civil fine up to the value of the unreported monetary instrument (minus the amount of any forfeiture under Section 2 of S. 2306). Under the present law (viz., 31 U.S.C. 5321), any financial institution could be fined up to $1,000 a day for willful violations of the Bank Secrecy Act. Therefore, whether an affected financial institution's liability would be increased or decreased by S. 2306 would depend upon the facts of the particular case, including the amount of the unreported transaction and how long the unreported transaction had remained unreported.

On the criminal side it would appear that the liability of "bank" financial institutions would not be significantly affected by Section 1 of S. 2306, except where

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an institution could be shown to have knowingly assisted a person in structuring a transaction for the purpose of evading the reporting requirements. Financial institutions remain liable for willful failures to file required reports. The liability of persons who cause or attempt to cause such failures to file, or who structure transactions in currency, would be specifically covered.

Q. 3. Section 2 of S. 2306 allows for the seizure and forfeiture of property related to a violation of section 5313 of the Bank Secrecy Act. Why is this provision necessary?

A. 3. Section 2 of S. 2306 allows for the seizure and forfeiture of currency, and property traceable to such currency, which was involved in a transaction in currency or an attempted transaction in currency violative of 5313. This is a necessary provision. At the apex of drug trafficking are the financiers, those persons who arrange the transfer of payments, who handle the "venture capital," and who process the receipts of this illicit industry. Often these persons, while they may very well know the nature of the business involved, are themselves never in the area where drugs are actually exchanged for currency. They invariably do, however, receive and process currency under circumstances and in ways which suggest an obviously illegal source.

Any average citizen would clearly recognize that the delivery of currency totaling hundreds of thousands, or millions, of dollars, in small bills, without bank wrappers, and in cardboard boxes, to a residence, at 2:00 a.m. by South Americans with automatic weapons is at least highly suspicious. If it were further proveable that the purpose of the deliveries was to have the currency "reduced," for a fixed percentage of the proceeds, into hundreds of small cashier's checks made payable to fictitious payees so that those checks could be physically taken from this country to

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Panama or Colombia without risk of seizure or the filing of a Customs report, most persons knowledgeable in narcotics investigations would quickly tell you that this was an integral part of drug trafficking. However, forfeiture under existing drug laws would probably not be permitted because, although it would be quite clear that the above process was designed to defeat the reporting requirements of the Bank Secrecy Act, proof of a narcotics "nexus" remains only inferential.

Q. 3. a) S. 2306 requires that before a seizure and forfeiture can occur, a willful violation must be demonstrated. For practical purposes how can you demonstrate that a willful violation occurred? Assuming that this provision had been on the books, could you have demonstrated a willful violation in the Anzalone, Varbel and Denemark cases? If you could have shown a willful violation, then why wasn't 18 U.S.C. section 1001 applicable in these cases?

A. 3. a) Willfulness of conduct, as with any required element of proof, must be demonstrated from the facts present in a given case. The type of evidence which would satisfy the requirements of proof could be as varied as are the different types of money laundering operations. Often, statements of a codefendant, statements of a defendant, business records and correspondence, and/or the results of court-authorized electronic surveillance provide direct evidence that certain conduct was specifically intended and undertaken to violate the Bank Secrecy Act. In other cases, circumstantial evidence could satisfy the proof requirement. For example, suppose a search of the residence of a suspected drug trafficker turned up the presence of hundreds of endorsed cashier's checks each under $10,000 made payable to various, apparently fictitious payees. Suppose further that handwriting experts determined that the same person had endorsed each and every check under a different name. Additional investigation might reveal that all of the checks had been purchased in cash, and that a number of the checks

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had been purchased in groups, with each group having been purchased at the same bank on the same day, and film from bank cameras established that each group of checks was purchased by the defendant, and each group was purchased, in the aggregate, for over $10,000. If independent proof existed to establish this person's knowledge of the reporting requirements of Title 31, such as the prior completion of a CTR by the individual, a fairly good circumstantial case could be made out to show that the structuring of the check purchase was done to evade the reporting requirements of Title 31.

Assuming that the terms of S. 2306 were in effect at the time of the conduct described in Anzalone, Varbel, and Denemark, the results would, or should have been markedly different. Statements from defendants in those cases indicated that the structuring conduct was purposely undertaken to evade the reporting requirements of Title 31. As this is expressly what is prohibited under S. 2306, a willful violations of 5313(a) would have been demonstrated.

Section 1001 was not held applicable to the defendants in the Anzalone, Varbel, and Denemark cases, as the courts determined that structured transactions did not trigger a CTR filing requirement and, therefore, the defendants, who had no personal duty to inform the banks of the structured nature of these transactions, did not cause the banks to either fail to report the transactions or conceal their existence. S. 2306 directly, by its own terms, makes structuring illegal.

Q. 3. b) How does this provision of S. 2306 differ with the current forfeiture under the federal drug laws (21 U.S.C. section 881)? Why are the provisions of 21 U.S.C. section 881 inadequate to seize the funds or property of a money launderer?

A. 3. b) S. 2306 differs from current forfeiture provisions under 21 U.S.C. 881 in both substance and procedure.

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Substantively, Section 881 concerns the forfeiture of property used in or derived from a violation of the controlled substances laws. That which makes property forfeitable under 881 is its nexus to a violation of the Controlled Substances Act. Subsection 2(b) of S. 2306 focuses upon currency, or property traceable thereto, which was involved in a transaction violative of Section 5313 of Title 31. Forfeiture under S. 2306 would not require proof of a specific drug transaction or other drug nexus as the source of the currency. (See also the remainder of the answers to question 3 and the response to question 11.)

Q. 3. c) Is it fair to an individual if his funds are seized and forfeited because the financial institution where the funds were deposited fails to file a CTR? How does S. 2306 avoid this situation?

A. 3. c) Subsection 2(b) of S. 2306 should be redrafted (see question 11, infra), to specify that no property should be forfeit under 2(b) to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. (This language should be added and substituted for the words "or if the violation or attempted violation was not willful" which now appears in S. 2306 at Subsection 2(b).) This suggested redraft would permit an owner protection from a financial institution's failure to file a CTR where the owner had no knowledge or part in that failure to file.

Q. 3. d) Should we permit the forfeiture of funds deposited by money launderers unless we can demonstrate the existence of some other criminal or civil violation other than a violation of the Bank Secrecy Act or section 1 of S. 2306?

A. 3. d) The intentional and willful violation of the reporting requirements of 31 U.S.C. 5313, or causing or

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attempting a violation of that section, should, by itself, support forfeiture. Intentional failure to report the transportation of monetary instruments out of or into the United States, as required under 31 U.S.C. 5316, has, for years, been sufficient to cause forfeiture even in the absence of a contemporaneous violation of another provision of federal law. Moreover, merely because property is subject to forfeiture does not mean that it will be forfeited. The administrative process, which provides for the remission of certain forfeitures, returns a considerable percentage of money seized for 5316 violations based upon a review of the facts surrounding the case, including whether it appears that the violation was related to or in furtherance of the violation of another provision of law.

Q. 3. e) Would a warrant have to be issued by a federal magistrate before a seizure can be made under S. 2306?

A. 3. e) Under S. 2306, and the Title 21 forfeiture procedures which it adopts, there is no statutory requirement that a magistrate issue a warrant for the seizure of property which may be forfeited pursuant to S. 2306. This is true of most federal forfeiture statutes. Under Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims, which is applicable to federal forfeiture proceedings pursuant to 28 U.S.C. 2461, the Clerk of the District Court may issue a warrant for arrest in rem of the particular defendant property following the government's filing of a verified complaint with the district court.

26 U.S.C. 7608, as amended by S. 2306, gives authority to persons, so delegated by the Secretary of the Treasury, to make seizures of property subject to forfeiture under the internal revenue laws and Title 31. The specific circumstances under which persons so delegated may seize such property are not specifically articulated.

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The Administration's Money Laundering Bill, S. 1335, specifically provides for the seizure of property in the absence of the court process described in Rule C(3) of the Admiralty Rules if the seizure is pursuant to a lawful arrest or search or if the Attorney General or the Secretary of the Treasury has probable cause to believe that the property would be subject to forfeiture under the relevant provisions of S. 1335.

Q. 4. In a report on money laundering activities issued by the President's Commission on Organized Crime, it appears that money launderers can effectively evade the Bank Secrecy Act by complying with it. This occurs because the money launderer is subject to financial penalty or imprisonment only upon a showing of a willful violation of the BSA. Therefore, if the money launderer complies with the recordkeeping and reporting requirements of the BSA, he can operate with virtual impunity until it can be demonstrated that another violation of federal law has occurred. Isn't it safer for a launderer to file CTRs and CMIRs because the reports currently filed are so numerous that it is doubtful that the government will find a needle in the haystack? Do any of the legislative proposals under consideration this morning address this problem?

A. 4. At present, there is no law which directly prohibits the laundering of money. That is, no federal law currently in effect directly criminalizes the intentional transfer of currency, through financial institutions, with the purpose of concealing or otherwise facilitating unlawful activities such as drug trafficking. The Bank Secrecy Act does not prohibit such activities. (S. 1335 would directly prohibit this conduct). Again, there is no law in effect at present which directly prohibits persons such as banks or bank customers from engaging in transactions in monetary instruments knowing that the funds involved are proceeds of drug trafficking.

The Bank Secrecy Act merely requires reports to be filed on certain types of financial transactions. With respect to domestic transactions, reports need only be generated on non-exempt cash transactions which exceed

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$10,000. Proof of violations under the Bank Secrecy Act concerns whether an IRS Form 4789 was not filed and why. The actual source of the currency involved, such as drug trafficking, is not a required element of proof, and might never, in the discretion of the court under the facts of a particular case, be brought to the attention of the jury.

Whether it would be "safer" for a money launderer to file a CTR or cause one to be filed rather than violate, or cause a violation of, the Bank Secrecy Act depends upon the facts of the particular situation facing the launderer. The number of CTRs filed each year makes it highly unlikely that CTRs alone, filed by one person, would cause an investigation into the affairs of that person unless the amount under that single name was exceptionally large. There is no doubt that the farther removed from the actual drug transaction one becomes, the more sense it makes to comply with the Bank Secrecy Act. This is not so much a problem with the existing legislation - our computers would be receiving precisely the information the law requires if a money launderer complied with the reporting requirements - as it is a need to develop more-sophisticated computer programs or investigative techniques to assist investigators in sifting through the CTR/CMIR "haystacks" in order to identify these low-profile money launderers.

Q. 5. As long as the BSA's filing requirements are met, the Act provides neither civil nor criminal penalties for institutions that otherwise facilitate money laundering transactions. Therefore, doesn't it seem likely that employees and officials of financial institutions have little incentive to alert the authorities to suspicious transactions since they run little risk of incurring liability? In your experience, have you found this "spirit of cooperation" lacking? Should financial institutions covered by the BSA be charged with an affirmative obligation to report suspicious transactions or incur some liability? Does the Right to Financial Privacy Act prevent financial institutions from providing meaningful information about suspicious transactions?

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A. 5. Potential Bank Secrecy Act legislation which would charge financial institutions with an affirmative duty to report suspicious currency transactions could very well conflict with existing statutory provisions. As previously suggested in the response to question 1.g), supra, the terms of the Right to Financial Privacy Act do not authorize a financial institution's spontaneous, voluntary disclosure to the government of specific customer account records or information derived from such records. Again, as previously suggested, while the Right to Financial Privacy Act permits financial institutions to notify government authorities that the institution has information which may be relevant to a possible violation of a statute or regulation, it is not clear what specific information may, at that point, be disclosed without incurring liability under the Act or otherwise. As a practical consequence, institutions having reported and recorded that which is required under the Bank Secrecy Act may take the safest possible course and simply not bring the suspect activities to the attention of government authorities. This situation is compounded where state law may operate as an additional bar to disclosure or operates to require the institution to advise its customers that account information has been disclosed (while notifying federal authorities of the suspect activities).

These statutory considerations no doubt have a chilling effect on an institution's "spirit of cooperation." S. 1335 contains a number of provisions which remedy the statutory difficulties described above. First, S. 1335 amends the RFPA and allows institutions, without their incurring liability, to provide specific financial records and information records to an agency of the United States when the institution or its personnel have reason to believe the records might be relevant to a violation of the Controlled Substances Act or Title 31, or would otherwise be relevant to a crime by or against a financial institution or

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supervisory agency. Moreover, S. 1335 preempts state laws which might qualify or prohibit such disclosure.

Q. 6. In your opinion do the civil and criminal penalties established by the BSA provide an adequate deterrent to money launderers? If they do not, what would you recommend?

A. 6. Money laundering is an extremely profitable undertaking. Furthermore, it provides a function necessary for the effective operation of a number of types of criminal activities conducted on a large scale. As the conduct concerned is both highly socially damaging and highly profitable, violations of the laws proscribing the conduct should, if deterrence is a goal, be punishable by stiff prison terms and fines. S. 2306 increases potential liability for violations under the Bank Secrecy Act by providing for the forfeiture of currency used in violations or attempted violations of 31 U.S.C. 5313. Moreover, civil fines may be imposed to equal the value of the unreported currency.

These are positive improvements. However, as previously stated, the Bank Secrecy Act is a statutory scheme intended to ensure the creation and maintenance of reports and records of transactions in monetary instruments. The Bank Secrecy Act penalizes the failure to file reports and to maintain records with a maximum prison term of five years. It does not, however, directly penalize money laundering itself. S. 1335 not only directly penalizes money laundering but would do so with a maximum twenty-year prison term.

Q. 7. Do you think the Right to Financial Privacy Act should be amended to enable, but not compel, financial institutions to volunteer sufficient information to put authorities on the track of suspicious transactions without fear of liability to customers?

A. 7. As previously stated in responses to questions 1.g) and 5., the Right to Financial Privacy Act should be amended to

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permit financial institutions to come forward with records and account information which suggest criminal conduct. Financial institutions should not be placed, as they are today, in the position where assisting community efforts to stop drug trafficking would result in possible financial liability to the institution.

Q. 8. Has it been your experience that the review of CTRs has resulted in the initiation of criminal or civil proceedings against money launderers or have CTRs been used to build a case after a criminal investigation has already begun?

A. 8. The required currency transaction reports significantly aid law enforcement in a number of different ways. A computer analysis or other review of CTRs may result in the commencement of a money laundering investigation. For example, in certain cases the discovery by the Internal Revenue Service that a particular region or institution is producing a level of currency unmatched by a commensurate or "normal" level of CTRs might lead to an investigation of the situation to determine if money laundering activities are responsible for the discrepancy.

This type of analysis led to the commencement of an investigation, code-named "Operation Tracer," in San Juan, Puerto Rico. Operation Tracer became one of the largest undercover bank/money laundering investigations in United States history.

On the other hand, the discovery of currency transactions unsupported by filed CTRs may have direct law enforcement significance in individual ongoing money laundering investigations. Surveillance, undercover transactions, bank records, and/or testimony from cooperating witnesses may establish that a particular individual or institution suspected of money laundering or other illegal activities has engaged in a series of currency transactions required to be reported under 31 U.S.C. 5313(a). Proof of filed CTRs, or the discovery of the non-filing of

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CTRs which should have been filed, might constitute valuable evidence or even the actual basis for prosecution of these individuals, depending upon the facts of the case. For example, filed CTRs have been used to corroborate and establish that suspected drug traffickers had currency available to pay employees, buy aircraft, and otherwise meet the expenses necessary for their trade. Filed CTRs have been used to assist prosecutions on charges of income tax evasion - showing that suspected tax evaders had large sums of unreported currency. Falsely filed CTRs have been used as the basis for prosecution under 18 U.S.C. 1001 of suspected money launderers who had hoped to disguise the source and origin of illegal currency by providing or causing false information to appear on CTRs.

Q. 9. From a review of the cases involving smurfing, it appears that smurfs are relatively low on the organized crime totem pole. By making smurfs criminally liable, is it your intention to grant them immunity to turn states' evidence to identify the king pins of the operation?

A. 9. Although most "smurfs" may be relatively low on the "organized crime totem pole," the culpability of each defendant and the extent to which he or she should be prosecuted for his or her criminal conduct must depend upon the facts of each case. In certain instances, these persons may be able to identify the "kingpins" of a drug operation or otherwise assist the government in its investigation. In those instances, a plea arrangement (not necessarily involving immunity from prosecution) may be worked out between the defendant and the prosecution. This arrangement might involve the government agreeing to drop certain of the charges or recommending to the sentencing judge that a lower sentence than might otherwise be appropriate be imposed. In other instances, it may become apparent that the "smurf" was an unwitting dupe in the laundering operation and should not be prosecuted at all, or that the "smurf" was actually one of the major members of the operation and should be

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prosecuted to the maximum for his or her involvement in the operation. In sum, the facts of each case must be allowed to determine the proper prosecutive action which should be employed.

Q. 10. On page 6 of Mr. Knapp's testimony, he suggests some technical changes to section 1 of S. 2306. What is the reason for these changes and how would they affect your ability to bring actions against money launderers?

A. 10. We suggest two changes to Section 1 of S. 2306. The words "or attempt to structure" and the words "in currency" should be added as indicated below.

> No person shall cause or attempt to cause a domestic financial institution to fail to file a report required by this subsection, shall cause or attempt to cause a domestic financial institution to file a report required by this subsection that contains a material omission or misstatement of fact, or shall structure [or attempt to structure] or assist in structuring a transaction [in currency] for the purpose of evading the reporting requirements of this subsection.

The first addition would clearly permit criminal prosecution of individuals who undertake the structuring of financial transactions yet fail in the attempt for reasons beyond their control. The words "in currency" are added to give greater clarity to this section by specifically providing that the structuring prohibition relates solely to currency transactions.

Moreover, these additions to Section 1, in concert with the proposed forfeiture provision in Subsection 2(b) of S. 2306, 7/ would permit forfeiture of funds used in an attempt to "structure" financial transactions.

7/ Section 2 of S. 2306 contains two substantive provisions. For purposes of this discussion, we have referred to them as Subsections 2(a) and 2(b), respectively. The first relates to
(Footnote Continued)

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Q. 11. On page 11 of Mr. Knapp's testimony, he recommends some changes to subsection 2(b) of S. 2306. Just what did he have in mind and how would these changes improve the bill?

A. 11. We recommend that Subsection 2(b) be amended as follows:

> (d) United States coin or currency (or other such monetary instrument as the Secretary may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of Section 5313(a) of this chapter may be seized and forfeited to the United States Government under the procedures of subchapter C of chapter 75 of title 26 of the United States Code[.] ~~whenever a person (excluding a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission liable under Subsection 5321(a) of this chapter) violates section 5313(a) of this chapter~~. No property or interest in property shall be forfeited under this subsection if it can be established that the owner is a bona fide purchaser for value who took without notice of the violation[.] ~~or if the violation of section 5313(a) was not willful.~~ [No property shall be forfeited under this paragraph to the extent of an interest of an owner by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.]

We recommend these changes in order to (1) clarify that the type of forfeiture contemplated by Subsection 2(b) is an in rem, civil forfeiture rather than a criminal forfeiture, and (2) better protect the rights of an innocent owner.

By way of preliminary explanation, it should be noted that the forfeiture provision in Subsection 2(b) differs in language from the forfeiture provision currently found in Section 5317(c) of Title 31 (related to CMIR violations). To the extent that Subsection 2(b) differs from previous forfeiture provisions, there is the likelihood that courts

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(Footnote Continued)
amendments of the CMIR forfeiture section now found at 31 U.S.C. 5317(c). The second refers to the proposed forfeiture provision for currency used in violation of Section 5313(a) of Title 31.

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could determine that 2(b) is sui generis, that is, that it is a different type of forfeiture statute - reasoning that if Subsection 2(b) was to operate in the same fashion as previous forfeiture statutes, such as 31 U.S.C. 5317(c) or 21 U.S.C. 881(a)(6), then Congress would have used the same or similar language in the drafting of 2(b). If 2(b) were determined to be a "new" type of forfeiture statute, then the application or operation of that provision would be an issue of first impression before the court which first heard a case brought under this section. The benefit of existing case law relating to other forfeiture statutes in terms of precedential value might be compromised. Therefore, to the extent possible, the language of Subsection 2(b) should "track" the language of preexisting forfeiture legislation, particularly in establishing that 2(b) is a civil, in rem forfeiture statute and that the interests of an innocent owner are protected.

The difference between a civil forfeiture statute and a criminal forfeiture statute is of great significance. A civil forfeiture statute permits a separate civil action against property - the property, or thing, is the defendant. A criminal forfeiture of property results from the criminal conviction of a defendant who owns the property - the person is the defendant. This is the basic distinction between in rem and in personam (or criminal) forfeiture. The significance is of particular importance because where a statute calls for an in personam forfeiture there can be no forfeiture of property before the conviction of a person/owner. A criminal trial of the owner must first be successfully concluded.

There is a possibility that a court, in its initial reading of the language which we propose be deleted from Subsection 2(b), could conclude that this language converts Subsection 2(b) into a criminal forfeiture statute. The language states that the defendant property "involved in a violation of section 5313(a) of this section may be seized

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and forfeited...whenever a person...violates section 5313(a) of this chapter." (emphasis added). 8/

We suggest that the language of Subsection 2(b) be amended to clearly reflect that this statute is an in rem civil forfeiture statute and, as such, does not call for an in personam criminal forfeiture action. The legislative history related to this provision should affirmatively and unequivocally reflect this intent. We suggest, out of an abundance of caution, that the following language be deleted from the forfeiture provision in Subsection 2(b):

> whenever a person (excluding a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission liable under subsection 5321(a) of this chapter) violates section 5313(a) of this chapter.

This deletion would make it clear that this subsection establishes an in rem forfeiture not dependent upon the conviction of a particular defendant.

8/ Compare the following forfeiture statute with 2(b):

> Any firearm or ammunition involved in or used or intended to be used in, any violation of the provisions of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter. (18 U.S.C. 924(d))

Section 924(d) was found by the Fourth Circuit Court of Appeals, sitting en banc, to be a criminal forfeiture statute. See United States v. One Assortment of 89 Firearms, 104 S.Ct. 1099 (1984). An appeal to the Supreme Court was required to resolve the "ambiguity."

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Additionally, the language in Subsection 2(b) which attempts to protect the rights of innocent parties should be strengthened. The present language of Subsection 2(b) of S. 2306 contains two "innocent owner" exceptions to forfeiture: (1) a simple "innocent owner" exception, and (2) "a bona fide purchaser for value" exception. At present it appears that the simple "innocent" owner, other than a bona fide purchaser, is protected only to the extent that he or she could show that "the violation or attempted violation of 5313(a) was not willful." As proof of willfulness will most probably be a required element of proof pursuant to this subsection, 9/ this "innocent owner" defense does not offer any additional protection. In place of that language, we suggest that the "innocent owner" defense language now found in 881(a)(6) of Title 21 be inserted. We would, therefore, delete the remainder of Subsection 2(b) following the words "notice of the violation" on line 6 of page 3 of S. 2306. In its place we would add the following sentence: "No property shall be forfeited under this paragraph to the extent of an interest of an owner by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner."

We also believe Subsection 2(a) of S. 2306 should be clarified to specify the procedures applicable to the subsection's increased forfeiture authority. Subsection 2(a) amends 31 U.S.C. 5317(c), which previously permitted forfeiture only of monetary instruments transported internationally without the filing of a currency and monetary instrument report (CMIR) required by

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9/ According to recent case law, forfeitures brought under the Bank Secrecy Act (Section 5317(c) in particular) may require proof of mens rea, or "state of mind," which was previously thought only to be required in criminal cases. (See e.g., United States v. One (1) Lot of $24,900.00 in U.S. Currency, 770 F.2d 1530 (11th Cir. 1985).

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Section 5316 of Title 31. Subsection 2(a) now permits the forfeiture of any property or proceeds traceable to such illegally unreported instruments. Under Sections 5316 and 5317(c) of Title 31, the U.S. Customs Service is the investigating and, consequently, the seizing authority in such CMIR cases. As forfeitures currently brought pursuant to 5316 and 5317(c) are now processed by Customs pursuant to the procedures set forth in 19 U.S.C. 1602-1619, it would be desirable to amend Subsection 2(a) to specify that the procedural authority of the Customs Service to sell and otherwise dispose of all property forfeitable under Subsection 2(a), including property traceable to illegally transported monetary instruments, is that authority presently set forth in 19 U.S.C. 1602-1619.

We therefore suggest that the following addition be made to Subsection 2(a) of S. 2306 to permit and assist the Customs Service's processing and administration of property seized pursuant to 5317(c). The language of 2(a) would thereby read as follows:

> (c) A monetary instrument being transported, or which has been transported, or any interest in any property, including any deposit in a financial institution, traceable to such instrument, may be seized and forfeited to the United States Government [pursuant to the provisions set forth in sections 1602-1619 of title 19, United States Code,] when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.

Q. 12. Mr. Knapp notes that neither bill under discussion designates money laundering as a crime. However, Senator D'Amato introduced S. 572 which makes money laundering a crime. Ask Mr. Knapp for his opinion about S. 572 and if he has none ask him to submit his comments to the Committee.

A. 12. Neither S. 572 nor S. 2306 effectively act to make money laundering, per se, a crime, but instead require some connection between such laundering activity and monetary instruments and financial institutions in order to proscribe

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this conduct. S. 1335, on the other hand, cuts a broader swath. While addressing money laundering related to financial institutions, as contained in S. 572, it would also proscribe the conducting of a transaction "involving the movement of funds by wire or other electronic means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce." S. 1335 also addresses those persons who cause to be conducted or who attempt to conduct such a transaction. (A proscription of an attempt to conduct such a transaction is not included in S. 572.) Sections relating to civil penalties and civil and criminal forfeiture are also included in the provisions of S. 1335 but are not included in S. 572.

In another limitation on the effectiveness of S. 572, that bill employs a restricted definition of "unlawful activity" that would limit any proscription on money laundering to racketeer-related criminal conduct, and it would not even cover all of the offenses that are predicate offenses for the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. 1961, et seq.), such as 18 U.S.C. 2312 and 2313 (relating to interstate transportation of stolen motor vehicles). S. 1335 would, instead, make the proscription applicable to "any act or activity occurring in whole or in part in, or directed at, the United States and constituting an offense punishable by death or imprisonment for a term exceeding one year under the laws of the United States or any State of the United States in which the act or activity took place." Such a broad coverage would effectively address the full spectrum of money laundering, while at the same time substantially reducing any use as a defense to a criminal prosecution that the defendant knew that the money was from a criminal endeavor - where such knowledge was clear - but that he/she did not know the money was related to an enumerated racketeering offense.

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Other sections of S. 1335, while not confined strictly to money laundering, would be particularly useful in dealing with those persons who handle "dirty" money. These include one new section proscribing the receiving of the proceeds of a federal felony and another section proscribing the bringing into the United States of any money or other property which has been obtained in connection with the violation of any law of a foreign country proscribing narcotics trafficking for which the punishment under the foreign law is imprisonment for more than one year. Neither of these provisions is contained in S. 572. S .1335 would also add a new offense to 18 U.S.C. 2 providing that "[w]hoever knowingly facilitates the commission by another person of an offense against the United States by providing assistance that in fact is substantial is punishable as a principal." This will, likewise, be of assistance in the prosecution of conduct related to money laundering.

The rest of the beneficial provisions contained solely in S. 1335, such as needed amendments to the Right to Financial Privacy Act, are detailed in my statement to the Committee at pages eleven through seventeen and in the responses to questions 1.g), 3.e), 5, and 6, supra.

Only through as broad a proscription as is contained in S. 1335 can the bulk of money laundering activity be effectively addressed. Intertwining a proscription on money laundering with S. 572's requirement that the activity involve transactions in, through, or by financial institutions would be an unnecessary, and possibly crippling, restriction on the usefulness of this type of legislation.

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D'AMATO--KNAPP--SUN

Q. 13. ON PAGES 9 AND 10 OF SUN'S TESTIMONY, HE COMPLAINS THAT BANKS THWART INVESTIGATIONS BY NOTIFYING THEIR CUSTOMERS OF THE EXISTENCE OF GRAND JURY SUBPOENAS BECAUSE A FAILURE TO DO SO WOULD SUBJECT THEM TO CIVIL LIABILITY.

(a) HOW PERVASIVE IS THIS PROBLEM?

(b) DO THE BANKS HAVE A LEGITIMATE ARGUMENT? HAS ONE EVER FAILED TO NOTIFY A CUSTOMER OF THE EXISTENCE OF A SUBPOENA AND THEN BEEN FOUND LIABLE BY A COURT?

(c) DOES THE CIVIL LIABILITY RESULT FROM A STATE OF FEDERAL CAUSE OF ACTION?

(d) WHAT CAN BE DONE TO REMEDY THIS SITUATION?

(e) WOULD THE SUMMONS AUTHORITY PROVIDED IN S. 571 ALLOW DOCUMENTS TO BE EXAMINED BY THE GOVERNMENT WITHOUT REQUIRING THE BANKS TO INFORM THEIR CUSTOMERS?

A. 13a. In the Central District of California, the Financial Investigations Task Force serves literally hundreds of grand jury subpoenas each year upon every kind of financial institution. Banks generally do not impede investigations by immediate notification to their customers of the existence of grand jury subpoenas; rather, banks thwart investigations by advising the government that they intend to do so. This situation, which occurs on a regular basis, thrusts the government in a position of either withdrawing the subpoena or seeking a court order. As I indicated in my testimony, the obtaining of a court order is neither practically feasible (given our resources) nor an absolute certainty given the inclination of some courts to deny such applications for non-disclosure orders.

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In California and indeed, throughout the country, banks have used the spectre of civil liability to justify their position. Although banks generally will honor our request to notify us before they disclose to the customer (so that we may have an opportunity to seek a court order or withdraw the subpoena), the problem repeats itself in numerous investigations where the legal department of a bank has decided that the exposure to civil liability outweighs any public interest in preserving and protecting the grand jury's integrity and investigation.

13b. In the course of my extensive contacts with the banking industry regarding the legitimacy of their civil liability argument, I have not yet heard of a single case where a customer in a (grand jury) narcotics money laundering case had ever sued a bank for non-disclosure of a grand jury subpoena. The Committee should note that the government, although not in a position to provide indemnification to the bank, will often provide the bank with a "good faith" or certification letter accompanying the subpoena which indicates to the bank that the government has requested the bank not to disclose the existence of the subpoena in the interest of justice and to preserve a grand jury investigation. The government has taken the firm position that should a lawsuit ever materialize, the existence of this letter will permit the bank to point the finger at the government. To date, I am certainly not aware of any successful lawsuit by customer against a bank for the disclosure of a federal grand jury subpoena.

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13c. According to bankers, a civil cause of action will arise under a California state constitutional provision which seems to provide California citizens with a general right of privacy. Certain California court decisions have lent support to this viewpoint. However, federal prosecutors have argued that pursuant to a recently passed state initiative California criminal law is now in accordance with federal law, which does not require disclosure of a grand jury subpoena. In addition, we have argued that the Supremacy Clause of the federal constitution applies as to any conflict between the federal grand jury's investigation and any state privacy interest provided under the California constitution.

13d. Passage of the preemption/good-faith provisions in the Department of Justice's proposed amendments to the Right To Financial Privacy Act would be a strong step in the right direction. Specifically, these provisions would act to preempt any state constitutional law provision in conflict with the federal Right To Financial Privacy Act, which does not require disclosure of grand jury subpoenas. It would also provide banks with protection against civil liability for cooperating with the government in this limited context. This proposed legislation has been supported by the President's Commission on Organized Crime, as well as other anti-money laundering proposals which are now pending before Congress.

13e. Probably not. Many banks in California and in other jurisdictions still insist that absent a court order or without express congressional intervention (i.e. preemption) in this area they will continue to disclose to customers the existence of

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the subpoena. Again, as indicated earlier, this position is based on state-created privacy interests which conflict with the interest of preserving the independence function and integrity of the federal grand jury.

Q. 14. DO YOU BELIEVE BANKS SHOULD BE REQUIRED TO FILE CASH TRANSACTION REPORTS ON DEPOSITS OF MONEY ORDERS AND CASHIERS CHECKS IN EXCESS OF $10,000 AS THEY MUST DO FOR CASH DEPOSITS?

A. 14. No. With respect to the profits of organized crime, the focus is properly on cash deposits. Requiring additional reports from financial institutions for transactions involving non-cash monetary instruments, although helpful, would not be that valuable to law enforcement, particularly when weighed against the burden it would place on banks and governmental agencies to monitor such transactions.

Q. 15. I UNDERSTAND THAT A PERSON CAN WALK INTO ANY U.S. POST OFFICE AND CONVERT IN EXCESS OF $10,000 IN CASH INTO A MONEY ORDER AND THE POST OFFICE DOES NOT HAVE TO FILE A CASH TRANSACTION REPORT AS WOULD A BANK. IS MY UNDERSTANDING CORRECT AND IF SO, IS THERE ANY EVIDENCE THAT DRUG TRAFFICKERS ARE USING OUR POST OFFICES TO LAUNDER THEIR DRUG MONEY? DO WE NEED TO TAKE ANY ACTION ON THIS MATTER?

A. 15 Senator D'Amato's understanding that post offices are not required to file Currency Transaction Reports is correct. There has been intelligence from several investigations indicating that the purchase of money orders is on the increase throughout the nation. These purchases are for amounts as small as $500 per money order and less. Thus, the difficulty of the problem is that money launderers are willing to break down their transactions to

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increments that even a $10,000 reporting requirement may not be capible of detecting. However, a short reporting form required to be filed by the purchaser at the post office for a certain amount in cash could perhaps be required, with the purchaser made aware that he or she is signing the purchase order form under penalty of perjury (subjecting her to the violations of federal law including 18 U.S.C. § 1001.)

Q. 16. ON APRIL 23, YOUR BOSS, ASSISTANT ATTORNEY GENERAL STEVE TROTT, TESTIFIED BEFORE THE HOUSE BANKING COMMITTEE. HE SAID THAT WHEN HE WENT TO PLACES IN LATIN AMERICA, LIKE COLOMBIA, WHERE DRUGS ARE GROWN AND PROCESSED AND ASKED WHAT THOSE COUNTRIES WERE DOING ABOUT THE PROBLEM - HE WAS OFTEN TOLD "IF YOUR PEOPLE WEREN'T SPENDING EIGHTY BILLION DOLLARS A YEAR ON THIS STUFF, WE WOULD NOT HAVE OUR PEOPLE GROWING IT."

THAT IS A GOOD POINT. HAS JUSTICE DONE ANY STUDIES AS TO WHY THERE IS SUCH A DEMAND FOR ILLICIT DRUGS IN THIS COUNTRY? DO YOU HAVE PERSONAL VIEWS ON THE MATTER? MR. SUN, I WOULD LIKE TO HEAR YOUR VIEWS AS WELL.

A. 16. There is no question that the government's effort to combat the drug problem must also focus upon eliminating the demand as well as stopping the actual flow of illicit narcotics. Hence, our efforts also require a massive educational and social campaign designed to publicize the evils of drugs. In that regard, if the media were willing to play a larger and more significant role in villifying the use of drugs, we might make great strides in that direction.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR D'AMATO FROM ROBERT HODGES

Q.1. The President's Commission on Organized Crime (President's Commission) issued a report on Money Laundering in which it found the problem to be pervasive. They also noted that the deliberate indifference to suspicious transactions by officials and employees of banks and other financial institutions often compounds this problem. What have the institutions that belong to your organization done to remedy this deliberate indifference? Has the ABA or the banks themselves undertaken any programs designed to adopt and implement comprehensive Bank Secrecy Act Compliance programs?

AMERICAN BANKERS ASSOCIATION
RESPONSES TO SENATOR D'AMATO'S QUESTIONS

A. 1) First, we categorically reject the Commission's assertion that banks and officials of banks have been deliberately indifferent to money laundering activities.

Much of the problem in Bank Secrecy Act compliance has been directed at financial institutions. Many of these problems are the result of the attitude throughout the 1970s of investigators, prosecutors, and bank examiners, who virtually disregarded the requirements of the Act, causing the GAO in 1981 to questions its effectiveness (See, General Accounting Office, "Bank Secrecy Act Reporting Requirements Have Not Yet Met Expectations, Suggesting Need for Amendment," July 23, 1981 (GGD-81-80)).

In 1980, the Department of the Treasury eliminated a series of exemptions to their regulations implementing the Bank Secrecy Act, including the categorical exemption for transactions with foreign banks and limiting the $10,000 reporting requirement to established customers who operate retail businesses, are U.S. residents, and whose names are kept by the institution on an exempt list; but the Department of the Treasury retained the exemptions for race tracks, sports arenas, transactions between a financial institutions and a commercial bank and payroll withdrawals by established depositors but not deposits by car, airplane, and boat dealers, even if they result from retail sales.

With the myriad of conflicting interpretations, as well as the limited focus by bank examiners toward the Bank Secrecy Act, it took a major event (Bank of Boston) to heighten awareness that filing currency transaction reports did not cover simply unusually large cash transactions. Most notably, fines levied against banks since the Bank of Boston incident have been for Bank Secrecy Act violations that occurred in the early 1980s. Our industry and the government learned simultaneously that there were gaps in understanding the Act's requirements. This is no longer the case. Banks have made voluntary disclosures of reporting errors prompting a backlog of CTRs in 1985 and 1986. The ABA and the banks themselves have undertaken many programs to improve compliance with the Act. Please see our response to Question 2.

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D'AMATO--HODGES

Q.2. Have financial institutions improved their compliance with the Bank Secrecy Act by making prompt CTR filings? What are the reasons that these financial institutions have improved their compliance procedures?

A. 2) The banking community has responded to the Bank Secrecy Act problems in numerous ways. In general, the ABA has sponsored over 60 teleconferences in 1985 on money laundering and how to eradicate this problem. Participation by the FBI, Department of Justice, Internal Revenue Service, Department of the Treasury, OCC, Federal Reserve Board, FDIC, DEA, and the U.S. Customs Service shows a willingness by the government and the financial industry to cooperate and work on educations efforts in this area.

The teleconferences have dealt with preparing, verifying and controlling CTRs, understanding the problems inherent with new accounts, multiple transactions and exceptions. Many bank security officers have shared their procedures on Bank Secrecy Act compliance. Some of there include:

- requiring strict procedures of identification for anyone opening a new account (individual and corporate);

- establishing a policy statement, support procedure compliance, and direct that an individual be appointed Bank Secrecy Act officer;

- making sure that whenever an account relationship is established with a customer who routinely conducts currency transactions, it becomes the reponsibility of the Branch/Lobby Manager to determine whether the customer falls within one of the exempt categories.

Q.3. Although financial institutions have been improving their compliance procedures through the filing of CTR's, do you think that the Treasury Department has made adequate use of these filings? Is the Treasury as proficient in its review of these CTR's as the financial institutions have become in filing them? I ask this because the President's Commission notes that one of the problems with all these filings is a lack of timely and adequate review. As the Commission Report notes: "today ... great that it poses a challenge to the effective use of that information." Do you agree with this conclusion?

A. 3) a) One method by which to measure whether or not the Treasury Department has made adequate use of the filed CTRs would be to see if the increase in the number of filings is paralleled by an increase in the number of arrests and convictions of drug traffickers. The ABA does not have access to such information.

b) Similarly, the ABA does not have access to enough information to make an assessment as to the proficiency of the Treasury's CTR review process. However, the tremendous backlog of close to 750,000 CTRs tends to suggest some problem.

c) We do agree that the lack of timely and adequate review poses a challenge to the effective use of that information.

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D'AMATO--HODGES

Q.4. The Report of the President's Commission suggests that financial institutions have sometimes not been very cooperative with law enforcement authorities in identifying suspicious transactions even when they have assiduously followed the reporting requirements of the BSA.

a) Has the Right to Financial Privacy Act discouraged financial institutions from disclosing relevant customer information to federal authorities?

b) Could you specify the manner in which the RFPA discourages cooperation between financial institutions and the relevant federal authorities?

A. 4) This fourth question reveals several incorrect assertions about the Right to Financial Privacy Act (RFPA). The ABA would like to take this opportunity to submit, for the record, a brief response to what we believe are common misconceptions which have given rise to these incorrect assertions.

The first assertion is that: FINANCIAL INSTITUTIONS ARE REQUIRED TO DISCLOSE TO CUSTOMERS ONGOING BANK SECRECY ACT AND OTHER CRIMINAL INVESTIGATIONS THUS JEOPARDIZING LAW ENFORCEMENT ACTIVITY.

Under Section 1102 of the RFPA, the government may have access to or obtain copies of the financial records of a customer from a financial institution, 1) if the customer authorizes such access; 2) by means of an administrative subpoena or summons; 3) in response to a search warrant pursuant to the Federal "Rules of Criminal procedure"; 4) in response to a judicial subpoena; 5) or in response to a formal written request to the financial institution. The RFPA generally requires the government to give notice to the customer of an order or request for records. However, in order to assist law enforcement efforts, customer notification can be delayed under Section 1109 of the RFPA (12 U.S.C. 3409). Customer notification can be delayed when:

- o customer records are disclosed pursuant to customer authorization;
- o a financial institution is served with an administrative subpoena and summons;
- o records are disclosed pursuant to a search warrant;

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- o a financial institution has received a formal written request; or
- o records pertaining to customer financial transactions have been transferred from one government agency to another.

A delay order may be granted by an appropriate court if the presiding judge or magistrate finds that:

- o the investigation conducted is within "lawful jurisdiction of the Government authority seeking the financial records";
- o there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and
- o there is reason to believe that the notice will result in
  - a. endangering the life or physical safety of any person;
  - b. flight from prosecution;
  - c. destruction of or tampering with evidence;
  - d. intimidation of potential witnesses; or
  - e. otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the other specified circumstances.

The court order may grant the requested delay for a period of up to 90 days. The government also has up to 90 days after serving a search warrant to mail a copy of the warrant to the customer's last known address. The government authority may also apply to a court for a further delay in the mailing of the notice of up to 180 days following the service of the warrant. The delay order also prohibits a financial institution from disclosing to the customer that records have been obtained or that a request for records has been made until expiration of the delay period.

The second assertion is that: FINANCIAL INSTITUTIONS ARE PRECLUDED FROM NOTIFYING THE GOVERNMENT OF A POSSIBLE VIOLATION OF A CRIMINAL STATUTE.

Section 1103 of the RFPA (12 U.S.C. Section 3403) maintains the right of any financial institution, its officers, employees, or agents, to notify the government that it has information which may be relevant to a possible violation of a statute or regulation. In addition, nothing in the RFPA prohibits the Government from obtaining records for foreign counter- or foreign positive-intelligence activities; for U.S. Secret Service investigations; in those instances in which delay in obtaining access to such records would create imminent danger of physical injury, serious property damage, or flight to avoid prosecution. (Section 1114 of the RFPA 12 U.S.C. Section 3414).

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We would also like to draw the attention of the Committee to guidelines published in 1979 by the Department of Justice setting out the information which the financial institution could give to law enforcement authorities under the RFPA (see attached).

The third assertion is that: FINANCIAL INSTITUTIONS HAVE NO PROTECTION FOR "GOOD FAITH" DISCLOSURE OF FINANCIAL RECORD INFORMATION.

A financial institution can notify the Government that the institution has information which may be relevant to a possible violation of any statute or regulation. (Section 1103(b) and (c) of the RFPA, 12 U.S.C. Section 3403). In addition, under Section 1117(c) of the RFPA (12 U.S.C. Section 3417(c), a financial institution that discloses financial records "in good faith reliance upon a certificate [of compliance with the Privacy Act] by any government authority" will be protected from liability for improper disclosure.

The legislative history of the RFPA of 1978 emphasizes that "if a bank grants access to records based only on an oral request ... it would not be acting in good faith." (See H.R. Rep. No. 13831, 95th Cong., 2d Sess. 218 (1978)).

The fourth assertion is that: GOVERNMENT AGENCIES CANNOT RELEASE FINANCIAL RECORDS TO OTHER GOVERNMENT ACENCIES DURING ONGOING INVESTIGATIONS.

Under Section 1112 of the RFPA (12 U.S.C. Section 3412), financial records obtained under the Privacy Act can be transferred to other agencies when the transferring agency makes a certification in writing that "there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department."

As discussed above, customers must be informed of any interagency transfers: however, the transferring agency or department of the receiving agency may obtain a court-ordered delay in mailing this notice to the customer.

The Administration's proposal would repeal these transfer provisions arguing that the agencies are hindered in their investigations by the required certification procedures. However, Section 3412(d) clearly provides, in addition to the requirements mentioned above, that:

> Nothing in this chapter prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency.

In conclusion, we would like to refer the Committee to the testimony of Gov. Martha Seger before the House Subcommittee on Financial Institutions Supervision, Regulation, and Insurance on May 14, 1986. The Federal Reserve Board, as stated by Mr. Herbert Biern, has received approximately 400 criminal referral forms since August 1985. On only 3 out of the 400 forms was the bank unable to fully complete the form because of any perceived constraints put on it by the RFPA. The RFPA is only an impediment to cooperation if the Government fails to utilize it.

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Of course, almost every transaction is in some sense unique. The courts will have to apply a rule of reason to determine whether or not a particular disclosure identifies the customer. A disclosure of a transaction of a particular size should not be viewed as identifying the customer unless the public or the government authority can reasonably be expected to associate the transaction with the customer. Nevertheless, before releasing to a federal agency any records that may identify a customer, either directly or by significant inference, a financial institution may wish to be sure that another, more specific exception applies, or that the government complies with the procedures of the Financial Privacy Act.

[2] Disclosures in the Financial Institution's Interest

There are three exceptions to the Financial Privacy Act that allow a financial institution to release customer information to protect its own interests.

[a] Security Interest or Bankruptcy Claim. First, Section 1103(d)(1) permits the release of financial records to any court or government authority "as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary."[245] Financial institutions may release customer information to federal government authorities for these purposes without any impediment under the Financial Privacy Act.

Since bankruptcy courts are federal courts, all release of information to them in connection with bankruptcies involving the financial institution will fall under this exception or the exception for judicial proceedings discussed in ¶ 2.05[3], infra. Perfection of security interests, however, most often involves state agencies, disclosure to which is not governed by the Financial Privacy Act. Similarly, since collection of a debt often involves private collection organizations or the action of state agencies, the Financial Privacy Act in most cases will have no application to the release of information. The exception does apply, however, when financial institutions file financing statements or security agreements with federal agencies or cooperate with federal agencies in collecting debts. For example, the exception would cover the filing of an airplane mortgage with the Federal Aviation Administration[246] or cooperation with the Small Business Administration to collect a government-guaranteed loan.[247]

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[245] Act § 1103(d)(1); 12 USC § 3403(d)(1).

[246] Id.

[247] See 124 Cong. Rec. H11729–H11733 (daily ed. Oct. 4, 1978).

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[b] Loan Information. The second exception in the financial institution's interests is contained in Section 1103(d)(2), which covers government loans, loan guaranties, and loan insurance agreements.[248] A financial institution may initiate contact with the appropriate government authority and provide the records that the authority needs to carry out its responsibilities in administering such agreements. The financial institution may disclose customer information as an incident to the customer's application process, as an incident to administration of the loan, loan guaranty, or loan insurance, or as an incident to processing a default under the loan.[249]

This exception was added to the Financial Privacy Act during the House debates,[250] and those debates reveal that the exception covers information concerning both threatened and actual defaults, as well as "other significant occurrences likely to have an effect on the proper administration" of the loan.[251] According to the debates, the exception attempts to balance the customer's interest in privacy with the "continuing need of the Government to monitor the expenditure of Federal funds to assure against fraud, misuse of funds, or failure to meet program requirements associated with loan and loan insurance programs."[252] Thus, the exception ought to cover any information that the financial institution should, as a matter of prudent business practice, report to the government as originator, guarantor, or insurer of a loan at government risk.

[c] Violation of Law. The third exception in the financial institution's interest is contained in Section 1103(c).[253] It permits the financial institution to report information that may be relevant to a possible violation of any statute or regulation. According to the legislative history, "a bank could, and should, report to the appropriate officials information pertaining to the cashing of a forged check, the passing of counterfeit currency or bonds, or the use of its services to facilitate a fraudulent scheme."[254] The legislative history also indicates, however, that the exception covers only information volunteered by the financial institution.[255] Government authorities

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[248] 12 USC § 3403(d)(2).

[249] 124 Cong. Rec. H11730 (daily ed. Oct. 5, 1978) (remarks of Mr. Moorhead).

[250] Id. at H11729–H11730.

[251] Id. at H11730.

[252] Id. at H11729.

[253] 12 USC § 3403(c).

[254] H.R. Rep. No. 1383, 95th Cong., 2d Sess. 218 (1978).

[255] Id. at 50.

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are not allowed to provoke disclosures under this exception without the cooperation of the financial institution, but must obtain any pertinent records that they seek in accordance with the procedures of the Financial Privacy Act.

In an agency advisory,[256] the Department of Justice has interpreted this exception as allowing a financial institution to report five types of information regarding a suspected criminal violation:

(1) The financial institution may report the names and addresses of the persons suspected and any relationship they may have with the financial institution.
(2) It may report the identity of the financial institutions or offices involved.
(3) It may report the specific offenses that are suspected to have occurred, to be occurring, or to be threatened in the future.
(4) The financial institution may report the account numbers and types of accounts in which evidence of the suspected offense is located, and the names and addresses of the holders of those accounts.
(5) It may report a general description of the transactions involved in the suspected offenses, including dates and any suspicious circumstances.

While the courts undoubtedly will give some weight to the interpretation of the Justice Department, that interpretation may be overly inclusive in certain respects. The legislative history quoted above makes clear that Congress intended to permit financial institutions to report only information that would enable the government to begin its investigation using the normal access procedures of the Financial Privacy Act. The exception is intended not to circumvent the ordinary access procedures, but to allow the government to obtain enough information to use them. It permits the financial institution to supply enough information for the government to draft an adequate request or order for information, including necessary information concerning the account party and a reasonably specific description of the records sought. Extraneous information unnecessary to serve this purpose should be beyond the scope of the exception.

While this exception generally applies to information regarding suspected violations of federal statutes or regulations, it contains no specific restriction to federal law. To the extent that a suspected violation of state

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[256] "Preliminary Draft of Justice Department's Advisory Guidelines to the Banking Agencies on Complying with the Right to Financial Privacy Act," [July–Dec.] Wash. Fin. Rep. (BNA) No. 28, T-10 through T-11 (July 16, 1979).

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Q.5. In the Report of the President's Commission, certain voluntary guidelines and changes in administrative practices are recommended. (A copy of these guidelines is attached.) What is the ABA's opinion on the guidelines and practices? Have they been endorsed? Has the ABA undertaken any efforts to inform its membership of these recommendations?

A. Voluntary Guidelines for Financial Institutions

The Commission has formulated voluntary guidelines which financial institutions can adopt in response to the problem of money laundering. They were developed after interviews with officials of financial institutions, reviews of several bank internal policy manuals, and observance of routine daily operations in a wide variety of financial institutions. The proposals take into account distinctions between individual institutions, such as their size, number of branches, and amount of commercial activity. In some instances, proposals are drawn from procedures already implemented in banks and considered by the Commission to be a model for other institutions. However, these proposals are not intended to be a policy manual or "how-to" guide, but are intended to alert responsible officials to possible shortcomings in their institutions' internal policies.

1. Party Responsible for CTR Completion

In reviewing the internal procedures of several banks, the Commission found that there are significant differences between methods of completion and filing of CTRs. In some circumstances the teller to whom cash is presented completes the form; in others, a specific teller is designated to handle large currency transactions and complete forms; in yet others, the branch manager is responsible for completion of the form and filing the report with the central bank office. In most procedures, however, only one employee is required to sign the CTR.

The branch manager or assistant manager should be ultimately responsible for completion of the CTR, and be required to countersign the CTR. This procedure should guarantee the thoroughness of information on the form, and ensure that the report is properly channeled within the institution prior to its filing with the IRS. In addition, institutions may increase their ability to detect suspect financial activity by designating a "risk management officer"—a mid-level manager who is ultimately responsible for activity within a specific sector of the bank's operation—to review all completed and countersigned CTRs.

2. Training for Officers and Employees

The Commission found that the amount of time devoted to teller training on Bank Secrecy Act compliance is usually less than one hour, with tellers instructed only in the most elementary requirements of the law and regulations.

Tellers should receive more extensive training, not only in the requirements of the regulations, but in the features common to money laundering schemes and the purposes and importance of the Bank Secrecy

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Act. Minimal training and preparation should expose the teller to potential situations where illegally obtained cash is brought into the bank, and to actions which are characteristic of money laundering schemes, such as "spreading" and "splitting" transactions in a single day.

In particular, tellers and the officers or employees who directly supervise them should be specifically instructed to recognize certain characteristics of customers who may be engaging in money laundering:

- An individual who makes large cash deposits when the business of that individual or his corporation is not of a type known to generate substantial amounts of cash;
- A person whose individual or corporate accounts show virtually no normal business-related banking activities and who uses those accounts primarily as a temporary repository for funds ultimately transferred to foreign bank accounts;
- Corporate accounts whose transactions, both deposits and withdrawals, are dominated by cash rather than by forms commonly used in commercial transactions, such as checks, loan proceeds, letters of credit, or banker's acceptances;
- A customer who provides minimal or fictitious information, or information that the financial institution cannot readily verify, concerning such matters as property ownership, credit history, or sources of income, particularly when the provision of such information would make the customer eligible for credit lines or additional banking services that a legitimate customer would find valuable;
- An individual engaging in numerous cash transactions, or purchasing cashier's checks, in amounts just below the $10,000 threshold for completion of CTRs;
- A customer who maintains an inordinately large number of accounts not commensurate with the type of business purportedly being conducted, and/or who engages in an inordinately large number of fund transfers between these accounts;
- A customer who makes regular large cash deposits or withdrawals associated with wire transfer to, from, or through narcotics source or transit countries, or countries whose secrecy laws have been known to facilitate the laundering of the proceeds of narcotics trafficking; and
- In the case of a currency exchange, a customer who uses the exchange's services to wire cash without changing the form of the currency (*e.g.*, U.S.-dollar-to-U.S.-dollar transfers).

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electronic data processing of Bank Secrecy Act reporting forms. The current processing system creates a significant lag between the time of a suspicious financial transaction and the time at which this information is available to investigators.

7. Notification to Law Enforcement Agencies

Financial institutions should establish a formal policy that encourages their officers and employees to report promptly to the appropriate law enforcement agencies all transactions suspected of involvement with money laundering. Such a policy should recognize the need of law enforcement agencies to receive such reports as soon as possible during or after the transactions, as well as the duty of the institution to act in conformity with Federal and state law governing the financial privacy of its customers. In implementing such a policy, each financial institution should provide specific guidelines to its tellers and branch supervisors for identifying such transactions.

A. 5) The guidelines for administrative procedures to ensure Bank Secrecy Act compliance, as proposed by the President's Commission on Organized Crime fall short of the procedures generally being used throughout the banking industry. Therefore, we choose to focus our efforts on improving our own guidelines.

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Q.6. On page 4 of your testimony, you recommend that no civil penalty be imposed upon a financial institution if it discovers a violation of the BSA and reports this violation to the Treasury.

a) At present, if a bank voluntarily discloses violations of the BSA it uncovers to the Treasury, is it subject to civil liability?

A. 6) a) At present, many banks have voluntarily taken immediate action to correct reporting deficiencies by preparing and filing the necessary CTRs with the Internal Revenue Service and advising the Treasury Department of the late filings.

The Treasury Department's response to the voluntary good-faith compliance efforts described above has been to assess or threaten the assessment of substantial civil penalties against banks that have come forward promptly and candidly to correct or supplement their earlier CTR filings. We believe that the Department has relied upon inadvertent clerical errors and erroneous interpretations of what is regarded as ambiguous regulations as the primary basis for fines.

b) Would subjecting institutions that uncover and report violations to civil penalties discourage them from engaging in internal audits and thereby improve compliance with the Bank Secrecy Act?

A. 6) b) Banks are now being subjected to civil penalties for reporting violations but still have begun supplementing their existing compliance programs with additional internal control procedures to prevent their recurrence. As good citizens, the banking community will continue to report errors even with the threat of unjustified fines hanging over us.

Q.7. On page 5 of your testimony you raise questions regarding the extent of the reach of the forfeiture provisions. Why shouldn't collateral that is used to secure transactions engaged in by money launderers be subject to forfeiture if that collateral is traceable to tainted funds? How would you suggest the language be amended to define with more certainty the scope of the forfeiture provisions?

A. 7) There is no reason why collateral should not be seized if it is used by a guilty party. However, we are worried about current parties who might unknowingly take tainted funds as collateral for some property either personal or real. Perhaps the Committee might examine the language in 28 CFR Part 9 relating to remission or mitigation of civil and criminal forfeitures. This would, at the very least, give an innocent party some possible form of relief.

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D'AMATO--HODGES

Q.8. In his testimony (p. 9-10), Assistant U.S. Attorney Sun noted that banks feel compelled to inform their customers the existence of grand jury subpoenaes. What civil liabilities are banks subject to if they fail to disclose the existence of a subpoena to their customers? What can be done to relieve the banks of this obligation?

A. 8) The Right to Financial Privacy Act's ordinary notice, waiting period, and challenge procedures do not apply to customer records sought by Federal grand juries. In addition, the civil liability provisions do not apply to disclosure by financial institutions prompted by requests and orders for information from grand juries, and the government is not required to provide a certificate of compliance with RFPA in connection with such disclosures.

However, the privacy of customer records is still protected when disclosure is contemplated for grand jury subpoenas. These privacy procedures are outlined in 12 U.S.C. Section 320. Rule 6(e) of the Federal Rules of Criminal Procedure governs secrecy in grand jury proceedings. While this covers grand jurors, government attorneys and the like, courts are free to use "gag orders" to prohibit financial institutions from disclosing the service of grand jury subpoenas upon them, the nature of the documents sought, and the extent of compliance with them. A knowing violation of the gag order may result in a contempt of court citation.

A financial institution must verify the authenticity of the subpoena and abide by a gag order. Perhaps Assistant U.S. Attorney Sun needs to explain to the committee why these procedures are not being followed.

Q.9. Would the summons authority of S. 571 permit the government to have access to relevant documents without requiring the banks to inform their customers in order to avoid any potential civil liability?

A. 9) The summons authority granted in S-571 is similar to authority available to other governmental bodies, and would, in our opinion, require compliance with the minimal procedural safeguards in the Right To Financial Privacy Act. Please see Question 4 for a discussion of some of the basic misconceptions about the RFPA.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR MATTINGLY FROM FRANCIS A. KEATING, II

Q.1 Mr. Keating, the provision of S. 571 which grants the Treasury Department administrative summons authority is designed to enable the Treasury to pursue civil actions against launderers without having to wait for grand jury action. Can you explain just how this will enhance Treasury's ability to successfully prosecute money launderers. Specifically, how much time will this authority save and will this lack of delay enable Treasury to secure more evidence, for example?

A.1. The summons authority in S. 571 is not designed to pursue civil actions against launderers without having to wait for Grand Jury action. As discussed below, in many instances civil proceedings may be appropriate in cases where there is insufficient evidence to warrant any criminal investigation. The main purpose of the proposed summons authority is to facilitate review of compliance by financial institutions with the Bank Secrecy Act and to assess appropriate civil penalties for non-compliance. Matters appropriate for criminal action would be referred to Justice for Grand Jury investigations. The summons authority is particularly needed with respect to the miscellaneous, non-bank financial institutions for which Bank Secrecy Act examination responsibility has been delegated to IRS. IRS' own summons authority is limited to Title 26 matters and, consequently, IRS currently must rely on these institutions' voluntary cooperation in the examination process. With respect to banks, the summons authority would allow Treasury better to pursue non-compliance information generally developed by bank examination agencies.

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Another purpose would be to follow up on Bank Secrecy Act criminal investigations where there was inadequate information to sustain a criminal prosecution. A civil action with its lower standard of proof and scienter might be the appropriate resolution for such a matter. Because of Grand Jury secrecy any information developed in the Grand Jury would not be available to Treasury. In such circumstances, summons authority would be helpful to Treasury to develop the civil case.

Q.2 Turning to another provision, can you tell the Committee how widespread you believe the problem of the willful violation of Bank Secrecy Act reporting requirements to be among employees of financial institutions? To what degree do you think an increase in the penalty will be a deterrent to involvement in laundering activities? What real effect will this have on drug traffickers and other criminals seeking to launder funds?

A.2. The Internal Revenue Service Criminal Investigation Division has testified about Bank Secrecy Act prosecutions of financial institution employees. The increased penalties and the proposed negligence penalty in the Administration's bill should not only be a further deterrent to money laundering, but should act as an additional incentive to legitimate financial institutions to improve Bank Secrecy Act compliance. Effective Bank Secrecy Act compliance programs, including good audit procedures, should act as a check on dishonest employees and will make the financial institution less likely to fall prey to money launderers. Universal compliance with the Bank Secrecy Act reporting requirement will affect drug traffickers and other criminals seeking to launder funds by foreclosing laundering through legitimate financial institutions.

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There is another potential effect on drug traffickers and other money launderers. If S. 2306 is enacted, the legal authority for prosecuting money launderers who cause a financial institution not to file under the Act or who structure transactions to avoid the reporting requirements under the Bank Secrecy Act would be clarified. There may be instances where a prosecution for a Title 31 offense could be brought where the underlying illegal activity that produced the laundered funds could not be established.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR MATTINGLY FROM BRIAN BRUH

Question:

Can you tell the Committee how widespread you believe the problem of the willful violation of Bank Secrecy Act reporting requirements to be among employees of financial institutions. To what degree do you think an increase in the penalty will be a deterrent to involvement in laundering activities? What real effect will this have on drug traffickers and other criminals seeking to launder funds?

Response:

We have convicted 34 bank employees since October 1984. Considering the number of banks and bank employees nationwide, this is a small number. We do not believe collusion by bank employees is widespread, but when it does occur, substantial amounts of funds can be laundered without detection.

For example, the Great American Bank of Dade County, Florida was indicted for laundering in excess of $94 million from January 1980 through February 1981 for various narcotics trafficking organizations. In another case, several Colombian nationals (known collectively as the Botero Organization) and U.S. citizens were charged with attempting to launder $57 million in U.S. currency through the branch of a Fort Lauderdale bank in an 8-month-period.

The current criminal penalty for a violation of the Bank Secrecy Act by a bank employee is five years in prison and/or a $250,000 fine. This penalty is an effective deterrent. We need to continue our efforts to identify bank employees and employees of other institutions who cooperate with criminals attempting to launder funds.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR MATTINGLY FROM
JAMES KNAPP and BRIAN SUN

Q. (unnumbered question by Senator Mattingly): Can you tell the Committee how widespread you believe the problem of the willful violation of Bank Secrecy Act reporting requirements to be among employees of financial institutions. To what degree do you think an increase in the penalty will be a deterrent to involvement in laundering activities. What real effect will this have on drug traffickers and other criminals seeking to launder funds?

A. Your question regarding Bank Secrecy Act violations by employees of financial institutions is a question which we can only answer with a limited degree of precision. While the Treasury Department advises us that thirty-four employees of financial institutions have been convicted of Bank Secrecy Act violations since October of 1984, this figure, by its very nature, represents only those employees who were identified, investigated, and prosecuted. It may be safely assumed, as with statistics related to the commission of most crimes (especially so-called "victimless" crimes), that a far larger number of persons than those actually prosecuted committed the offense but were never identified, let alone convicted. However, as an overall percentage, the number of bank employees who intentionally and willfully violate the Bank Secrecy Act's reporting requirements is probably rather small. Yet the possible consequences of even one "dirty" bank in a thousand are enormous. For example, one bank, the Great American Bank of Dade County (Miami, Florida), laundered approximately ninety-four million dollars in thirteen months.

An increase in penalties for money laundering, as for any offense, only serves to deter those persons who fear that they will be punished for their criminal activity. The deterrent value of increased sentences is a function of the likelihood of punishment (viz., apprehension rate) versus the perceived rewards for committing the offense. Because of the nature of money laundering, we feel that greater deterrence would be realized by providing strict penalties for a wider range of money laundering conduct than just increasing the penalties for the current offenses.

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MATTINGLY--KNAPP--SUN

S. 2306 is clearly a step in the right direction in that it proscribes a greater range of money laundering conduct, such as the intentional structuring of cash transactions to evade the Bank Secrecy Act's reporting requirements. We feel, however, that the combination of an even wider range of criminal conduct, such as is described in the Administration's Money Laundering and Related Crimes Act, S. 1335, plus a maximum prison term of twenty years and a fine of $250,000 or twice the value of the money laundered (whichever is greater), would send a message to drug dealers and other persons contemplating laundering funds derived from illegal activities that the punishment for laundering the proceeds of a crime is as serious as the punishment for the crime itself.

Without a doubt, "dirty" money will always have outlets, particularly if it can be taken offshore and returned as a "loan," or otherwise have its illegitimate origin masked. However, if through broader proscriptions and enhanced penalties we can limit the legitimate outlets for illegitimately derived money, thereby limiting the rewards of such illicit conduct, we may be serving to deter other persons from the underlying criminal conduct in addition to the money laundering activity. If nothing else, at least we will be making it harder for those persons to enjoy the illicit fruits of their illegal activities.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR MATTINGLY FROM ROBERT HODGES

Q.1. Can you tell the committee how widespread you believe the problem of the willfull violation of Bank Secrecy Act reporting requirements to be among employees of financial institutions. To what degree do you think an increase in the penalty will be a deterrent to involvement in laundering activities? What real effect will this have on drug traffickers and other criminals seeking to launder funds?

A.1. There has been no proof that any of the CTR filing violations have been willful.

If a criminal penalty were imposed, for the first time, on those persons who launder, or attempt to launder, the proceeds of their illegal activities through banks by inducing or causing the bank employee to file an incorrect CTR or to fail to file a CTR, the law enforcement community and the financial industry would have, for the first time, an effective weapon against drug traffickers.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR PROXMIRE FROM FRANCIS A. KEATING, II

Q.1 Do you believe that Congress could strengthen compliance with the Bank Secrecy Act if we provided for the removal of an officer or employee from a financial institution if they were found to have violated the Act while working for such an institution?

A. 1. The authority of the Secretary of Treasury under 31 U.S.C. § 5312(a)(2)(u) to designate a business as a financial institution subject to the recordkeeping and reporting requirements of the Bank Secrecy Act is very broad and so far has proved adequate to meet changing law enforcement needs. No additional statutory authority presently is needed in this area.

Q.2 As you know there is an exemption from the Bank Secrecy Act reporting requirements for customers the banks consider to be running legitimate cash oriented businesses such as restaurants or grocery stores. The customer need not apply for such an exemption - its up to the discretion of each individual bank to grant such exemptions. Do you think it would help if we added a requirement to the Bank Secrecy Act that each customer given an exemption must apply for it and explain in their application why they need it and that we provide penalties for filing false information on the application? Do you think Treasury should also have to approve such exemptions? Why or why not?

A. 2. We believe that rigorously enforced criminal and civil sanctions of the Bank Secrecy Act should be adequate to deter noncompliance. It would be difficult for Treasury to administer the sanction of removal of bank employees and believe that this is best left to financial institutions in appropriate cases. A number of financial institutions we have spoken to have begun to dismiss employees for even relatively minor failures to comply with the Bank Secrecy Act or the financial institution's Bank Secrecy Act procedures.

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PROXMIRE--KEATING

Q.3 I understand that under the Bank Secrecy Act we require financial institutions, brokers, insurance companies, currency exchanges, pawnbrokers and even casinos to file currency transaction reports. Under the Act as now written can you require other types of businesses to report if they become a place to launder money or do we need to give you additional statutory authority if you need to do so?

A. 3. As we have testifed, we do not believe that all exemptions should be approved by Treasury, but that banks should retain the primary responsibility to determine the appropriateness of exemptions of transactions with retail sellers of goods, restaurants, etc., at amounts commensurate with their businesses. The bank is in the best position to know its customers and the nature of their businesses. The alternative of the Treasury approving every exemption would put responsibility for evaluating exemptability in the hands of a party with inferior knowledge of the customer and ultimately weaken, rather than strengthen, the administration of the Act.

We are considering a regulatory enhancement to the exemption process, whereby a bank would have to obtain from the customer certification on a Treasury form that the information on which the exemption would be based was correct. This information includes the nature of the customer's business and the amount and type of regular cash transactions. Filing of the form would not relieve banks of the responsibility to make further inquiries in cases where they have reason to know that the information is false, but in other circumstances the bank could rely on the

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information provided. These forms would be required whether a bank was granting an exemption unilaterally or applying to Treasury for a special exemption. In cases where a special exemption is sought, the financial institution would file the forms with Treasury and Treasury would evaluate the information in granting any special exemptions. A customer who provided false information could be prosecuted under 18 U.S.C. § 1001 and, if S. 2306 is enacted, would also be directly liable under the Bank Secrecy Act.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR PROXMIRE FROM BRIAN BRUH

Question (1):

Can you tell us what is the average denomination of money orders and cashiers checks purchased at banks and other financial institutions? Does this vary in different parts of the country and if so why? Should Congress give law enforcement officials the authority to raise or lower the dollar amount of cash transactions that need to be reported based on where financial institutions are located?

Response:

We have no information regarding the average denomination of money orders and cashiers checks purchased, nor do we know if this varies in different parts of the country. However, based in large part on the types of cases we have investigated, we have found that money launderers favor large urban areas where there are numerous financial institutions and their activities are more difficult to detect.

We believe raising the reporting requirements in certain geographic areas would very likely result in the money launderers moving their activities into those areas where the reporting requirements are higher. Secondly, having different standards apply in different geographic areas may make it difficult to prove the money launderers' knowledge of the reporting requirements since they would not be uniform. This could hinder our ability to prosecute such violators. In addition, separate reporting requirements in different areas of the country would complicate the processing of Currency Transaction Reports (CTRs). Therefore, we prefer that all financial institutions be required to report cash transactions on a uniform basis.

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PROXMIRE--BRUH

Question (2):

I understand that IRS has been given the job of monitoring the Currency Transaction Reports required under the Bank Secrecy Act. As you know S. 571, the bill I am co-sponsoring with Senator D'Amato, provides for administrative subpoena power in the Treasury Department to enforce the reporting requirements of the Act. Some are concerned that such power might be abused. Does the IRS already have such subpoena power under Title 26 of the U.S. Code? For what purposes does the IRS use that power? Has the agency been accused of abusing that power? Why do you need additional subpoena power in Title 31 to enforce the Bank Secrecy Act?

A) Does the IRS already have such subpoena power under Title 26 of the U.S. Code? For what purposes does the IRS use that power?

Response:

The Internal Revenue Service does not have subpoena power, but does have administrative summons authority for..."the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax...or collecting any such liability...." (26 U.S.C. 7602). Taxpayers and third parties may be summonsed to produce books and records or to testify regarding matters relevant or material to the inquiry. This authority is available for both civil and criminal tax cases.

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B) Has the agency been accused of abusing that power?

Response:

A taxpayer or a third party may challenge IRS summons power by requesting a judicial determination in a summons enforcement action. No sanctions are imposed for failure to comply with a summons based upon good faith objections until a summons enforcement action is brought, a court orders compliance and the witness thereafter defies the order. Reisman v. Caplin, 375 U.S. 440 (1964).

In a seminal Supreme Court decision, U.S. v. Powell, 379 U.S. 48 (1964), it was established that the government must satisfy four factors to obtain judicial enforcement of an IRS summons:

(1) the summons must be served for a legitimate purpose;

(2) the material summonsed must be relevant to that purpose;

(3) the summonsed information must not already be in the government's possession;

(4) the proper administrative steps must have been followed.

The IRS has historically been sustained in summons enforcement litigation and this can be attributed to our strict internal controls over the issuance of summonses.

C) Why do you need additional subpoena power in Title 31 to enforce the Bank Secrecy Act?

a. Summons authority is necessary in order to protect cooperative financial institutions that wish to provide information to the Service but fear law suits by customers for alleged violations of the 1978 Financial Privacy Act. This authority is particularly desirable for civil examinations.

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b. Summons authority is also necessary in order to compel the production of appropriate books and records to determine if financial institutions have complied with the reporting and recordkeeping requirements of the Bank Secrecy Act. The IRS has jurisdiction to monitor Title 31 reporting and recordkeeping compliance by non-bank financial institutions (as well as a very limited category of Title 31 banks), but we have no recourse against an institution that refuses to produce its records.

c. In the context of a Title 31 criminal investigation, summons authority would eliminate our need to rely upon the grand jury subpoena as the sole method of compelling the production of relevant information. Without summons authority, we are unable to effectively conduct an administrative investigation in Title 31 cases. Sole reliance on grand jury investigations has certain drawbacks. Disclosure of information presented to the grand jury is quite limited (See Rule 6(e) of the Federal Rules of Criminal Procedure). If an indictment is not returned, the grand jury material will not be available to assist a civil tax audit. The Supreme Court held in United States vs. Baggot, 103 S. Ct. 3164, that disclosure of grand jury material for use in an IRS civil audit is not appropriate because the primary use of the materials should be to prepare for litigation and not to determine the correct amount of tax liability.

Convening a grand jury also requires use of Justice Department resources and the Court system at the investigative stage of the case. Contrast this with an administrative investigation (2/3rds of our Title 26 investigations), in which the judicial system is only utilized if the investigation reveals that prosecution is warranted (and the case is referred to the Justice Department).

Although the grand jury is an essential investigative tool, having the option of conducting a Title 31 investigation administratively would definitely improve our ability to enforce the Bank Secrecy Act.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR PROXMIRE FROM
JAMES KNAPP and BRIAN SUN

Q. (unnumbered question by Senator Proxmire): One reason drug traffickers hire smurfs to convert illegally obtained cash into cashier's checks is because cashier's checks can be brought into other banks for deposit and the receiving bank does not have to file a Currency Transaction Report on cumulated deposits of such checks. Do you believe banks should be required to file Currency Transaction Reports on deposits of money orders and cashier's checks in excess of $10,000 as they now must do for cash deposits?

A. With regard to whether banks should be required to file currency transaction reports (CTRs) on deposits of money orders and cashier's checks in excess of $10,000, we have been advised that the Department of the Treasury does not support such a change. The Treasury Department's position is based primarily on the belief that such a reporting requirement would create an undue burden on banks and would most likely relate to legitimate activity. As an alternative, the Treasury Department has proposed a regulation requiring a bank to report the sale of any instrument (e.g., cashier's checks, bank money orders, certificates of deposit) if the instrument is bought with cash totaling $3,000 or more.

Our main interest in this area is to make sure that cash, which does not inherently create a "paper trail" when it is exchanged, can be adequately traced by investigators. As such, we would agree with the positions taken by the Treasury Department.

Q. [question by Senator Proxmire directed to Assistant United States Attorney Brian Sun regarding the purchase of money orders at post offices]

A. We defer to the views of Assistant United States Attorney Brian Sun with regard to this follow-up question which was directed to him.

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PROXMIRE--KNAPP--SUN

Q. (unnumbered question by Senator Proxmire): On April 23, your boss, Assistant Attorney General Steve Trott, testified before the House Banking Committee. He said that when he went to places in Latin America, like Colombia, where drugs are grown and processed and [he was] asked what those countries were doing about the problem - he was often told "If your people weren't spending $80 billion a year on this stuff, we would not have our people growing it." That is a good point. Has Justice done any studies as to why there is such a demand for illicit drugs in this country? Do you have any personal views on the matter?

A. From the earliest days of this Administration, we have been aware that the nation's drug problem required a national strategy which utilized government and private-sector resources to address the drug problem at five separate points: drug-abuse prevention; drug law enforcement; international cooperation to control narcotics; medical detoxification and treatment; and research. Studies into the problem of drug abuse, aimed primarily at determining why people start taking drugs, have been conducted, inter alia, by the National Institute on Drug Abuse (NIDA). Many of the steps taken to discourage drug and alcohol abuse among school-age children have been based upon information found in these studies.

Efforts toward teaching the destructive nature of drugs and the benefits of positive behavior, such as making good decisions and constructively handling responsibilities and feelings, are aiding children in moving away from drug-taking behavior and towards embracing positive goals, such as excellence in education, physical fitness, and personal integrity. The "Just say no" campaign has shown that children have a choice to say no to drugs, and the peer pressure which many believed used to encourage drug use has now been shifted to discourage such drug use.

We can see that our efforts at prevention are finally producing measurable results among our school-age children, and it is believed that these gains will improve steadily. Still, there is at least one generation of Americans that received the wrong messages concerning drugs in their

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formative years, such as the erroneous concepts as "hard" drugs and "soft" drugs, "recreational use," etc. Because many of these people are beyond the point at which they are able to comprehend the harm these drugs are causing to themselves and others, it must be the responsibility of all caring persons to make sure that the true message regarding the destructive nature of drugs gets through to these persons. We cannot be "innocent" bystanders to the effect of drugs on our families or our friends. The parade of lives that have been lost to cocaine, heroin, marijuana, PCP, LSD, and all other drugs that someone at some time thought would be "OK," "just once," because "everyone else is doing it," must stop. The right messages must go out.

We acknowledge the fact that our citizens spend an estimated $80-110 billion on drugs every year, and that this demand for drugs exacerbates problems in other countries where many of these drugs are grown or processed. As we have stated above, however, we are working to reduce the demand for drugs in the United States, which should lessen the negative impact on those foreign countries. We are also actively working with the governments of drug-source and drug-transit countries to help them in their efforts to stop the production of illicit drugs and otherwise to keep drugs from reaching the United States.

As to an official from a foreign country where drugs are grown for use in the United States who claims that it is only our problem, we would advise him or her that the problem is in his or her own country, too, and at a level which is probably increasing yearly. It is for this reason, in addition to curtailing the drug problem in the United States, that we must all work together to stop the illicit production of drugs.

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PROXMIRE--KNAPP--SUN

Q. (unnumbered question by Senator Proxmire): On April 16, Mr. Richard Wassenaar, the Assistant Commissioner for Criminal Investigations at the IRS, testified in the House that during 1985 the IRS recommended that 137 financial institutions be prosecuted for money laundering. Can you tell us how many of those recommendations were pursued by the Justice Department and how many were pursued successfully? I would also like to know, if Justice did not pursue some recommended prosecutions, the reasons it did not do so.

A. According to figures provided by the Internal Revenue Service, Fiscal Year 1985 began with 144 allegations of possible violations of Title 31 (the Bank Secrecy Act) under review by the United States Attorneys' Offices or pending indictment. During FY '85, the IRS referred an additional 317 matters to the United States Attorneys' Offices (not the 137 transposed in the question). Of those 461 matters, it is our understanding that 276 were indicted, prosecution of 25 was declined, and the remainder were under review or pending indictment at the end of FY '85. Also during FY '85, there were 163 convictions for Title 31 violations which had been investigated by the IRS, including 8 convictions of financial institutions. However, because of the time between referral, indictment, and trial, not all of those 163 convictions were for matters referred or indicted during FY '85.

Although we cannot comment on why, in any particular instance, the Justice Department did not pursue a Title 31 prosecution as recommended by the IRS, we will state that the role of the Department of Justice in these matters is to use our independent judgment and discretion in determining the strengths (and weaknesses) of a particular case. It can be stated with assurance that the cases which were declined were probably treated in that manner because of evidentiary weaknesses, most likely relating to the requisite proof of knowledge and willfulness which Title 31 prosecutions require, or, as noted in the answer to question 1.c), supra, the theory of the investigation related to a variety of "structuring" which has since been placed in doubt by the recent decisions of several of the Courts of Appeals, and the United States Attorney's Office decided not to pursue the matter further because of the adverse case law.

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RESPONSE TO WRITTEN QUESTIONS OF SENATOR PROXMIRE FROM ROBERT HODGES

Q.1. As you know there is presently a procedure under the Bank Secrecy Act whereby banks can exempt cash transactions by certain customers, such as grocery stores or restaurants, from the reporting requirements under the act. That process is sometimes abused and banks sometimes get into trouble because of it. Do you think it would be helpful if the bank customer had to formally file for such an exemption indicating the source of his cash and the nature of his business? Do you think the Treasury Department should be required to approve any such exemptions? Why or why not?

A.1) It a bank customer formally filed for exemptions, the amount of exemptions would substantially decrease causing a tremendous increase in CTR filings. Legitimate business customers are not adversely affected by the filing of a CTR and have no incentive to receive an exemption. Exemptions are for the benefit of the financial institution and the efficient investigative purpose of a CTR.

However, approval of exemptions by the Treasury as proposed by Senator DeConcini in S. 1385 would lessen some of the reporting problems associated with exemptions.

S. 1385 would amend 31 U.S.C. 5318, which gives the Secretary of the Treasury authority to "prescribe (or revoke) an appropriate exemption" by requiring the financial institution to provide to the Secretary of the Treasury (or his delegate) "a list of customers of the financial institution whose transactions have been exempted" and be further requiring the Secretary to "review and approve or revoke the list of exemptions within 90 days after the date of receipt." If the Secretary failed to notify the financial institution within the time provided, the exemption list would be deemed approved. These proposed changes would encourage frequent review of the CTR exemption lists and provide financial institutions with an incentive to internally review and update their lists. These reviews would guarantee that the lists are used only for their customers clearly intended to qualify under the regulations.

Q.2. Do you think that a bank's willful violation of the Bank Secrecy Act would be an unsafe or unsound action sufficient to justify the withdrawal of a bank's FDIC insurance?

A.2) At what point does a willful act of an employee become the equivalent of "a practice of the bank" or a willful violation of the bank, thereby putting the bank at risk of losing its deposit insurance. This is just one of many grey areas that needs clarification before we can respond further.

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PROXMIRE--HODGES

Q.3. In recent hearings on this subject before this committee's counterpart on the House side, an admitted money launderer explained how he achieved his results. One of the most suprising aspects of this technique was the ease in which the "smurf" was able to convert the dirty money into cashier's checks or other negotiable instruments without the use of any identification.

Do you think that this problem, the ease in which the money launderer can convert his cash into negotiable instruments needs to be addressed also? And, what do you think can be done to remedy this concern?

A. 3) It has been suggested that one remedy to the easy convertibility of cash into negotiable instruments would be to limit the sale of cashiers' checks to only established customers. Most of the suggested solutions to this problem create new problems of their own.

Easy convertibility should not be regarded as the cause of the problem of drug trafficking, but only one area in which the problem of drug trafficking manifests itself.

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STATEMENT OF EUGENE T. ROSSIDES

REGARDING MONEY LAUNDERING PROPOSALS

TO THE

COMMITTEE ON BANKING, HOUSING

AND URBAN AFFAIRS OF THE

UNITED STATES SENATE

May 15, 1986

Mr. Chairman and Members of the Committee, I appreciate the opportunity to express my views on the various money laundering bills now being considered by Congress. I address this issue from the somewhat unique perspective of having dealt with the Currency and Foreign Transactions Reporting Act of 1970 ("Act") from both sides of the regulatory fence. From 1969 to 1973 I served as Assistant Secretary of the Treasury for Enforcement, Tariff and Trade Affairs and Operations. In that position I presented the views of the Treasury Department and the Administration to the House and Senate Banking Committees which considered the Act when it was proposed in 1969. Following its enactment, my responsibilities included the enforcement of the Act. In my present capacity as a partner in a law firm in Washington, D.C. I represent a major U.S. banking institution. I also serve as a director of a national bank. These banks are committed to doing all they can to fully carry out their responsibilities under the Act but at the same time are concerned about protecting the trust of their law abiding customers -- a trust which is the linchpin of our domestic banking industry and which depends so importantly upon individual privacy, which has been increasingly encroached upon by government actions. I therefore appreciate the opportunity to present my views on this important issue.

As the recent Congressional hearings have underscored, money laundering is an important complement to drug trafficking and other criminal activity. While efforts thus far to abate money laundering have had serious limitations, Congressional and media attention to the subject over the past year have produced a high level of vigilance in financial institutions and a high level of consciousness among enforcement officials. In general, this has been an altogether salutary development. Nevertheless, I perceive as troublesome certain aspects of the current debate about money laundering legislation.

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First, while money laundering is a serious problem that must be vigorously addressed, it does not necessarily follow that imposing broad new requirements upon banks will solve the problem. Second, I become concerned when I see the law enforcement community shifting its focus away from drug traffickers and others in organized criminal groups and preoccupying itself with reporting failures by banks. While some banks have been less than diligent in meeting their filing obligations under the Act, I think William Nickerson, former Deputy Assistant Secretary of the Treasury for Enforcement, was directly on point recently when he observed that the government had "misenforced" the law by prosecuting bankers instead of narcotics dealers and other money launderers and that "what we've seen is a loss of understanding of the purpose of the act."[1/] While the recent Congressional attention given to enforcement of the Act has been commendable, the Congress should not in the process allow the law enforcement community to escape critical review and scrutiny for its own singular failure to effectively combat drug trafficking.

The Currency and Foreign Transactions Reporting Act of 1970

To understand the application of the Currency and Foreign Transactions Reporting Act of 1970, often referred to as the "Bank Secrecy Act", one must recall the purpose for which it was enacted. With direct authority over the U.S. Customs Service and Secret Service, as well as policy supervision regarding IRS criminal enforcement, I, along with other law enforcement officials, supported passage of the Act as a useful tool to augment existing criminal investigations. We worked with Senator Proxmire, the sponsor of the Senate legislation, Senator Wallace F. Bennett and this Committee's staff to fashion an effective bill. The data to be retained by the banks under the Act was to provide a source of information to bolster or help direct ongoing investigations of targeted suspects and future specific investigations. It was created to ensure that documents relevant to a particular suspect remained available for the use of investigators and prosecutors. The Act's target was the alleged criminals being investigated, not the banks. The reporting requirement established pursuant to the Act was, in general, a continuation and alteration of then existing reporting requirements.

The Act was passed only after Congress took the time to strike a balance of the needs of law enforcement with the administrative burdens the recordkeeping and reporting requirements imposed on financial institutions. The Act was viewed by those in law enforcement, the financial industry and the Congressmen and Senators who passed it as primarily a recordkeeping and record retention law. Indeed, its provisions

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are contained in the United States Code under the heading "Records and Reports on Monetary Instruments Transactions." The Act did not establish and was never understood to have established a relationship between financial institutions and government whereby banks would be required to conduct surveillance on their customers and report the slightest suspicious transactions to government agencies. Such a concept is alien to our system of law and justice.

Application of the Act Over the Last 15 Years

After conducting a thorough investigation of utilization of the data gathered under the Act, the Comptroller General reported to Congress in 1981 that "the reports required under the Act are not widely used and their potential utility as an investigative tool is unknown."2/ The Comptroller General concluded: "After 10 years, the Bank Secrecy Act has not been used sufficiently to demonstrate whether the demands it places on the private sector, especially financial institutions, are commensurate with the benefits obtained by the Federal Government."3/

Although the Comptroller General's report put the agencies on fair notice as to the lack of adequate utilization of currency transaction reports ("CTRs") and related documents, the banking industry was not made aware of any substantial failure of compliance on its part. Thus, the Comptroller General reported that according to the bank regulatory agencies in 1981, "fewer than 2 percent of financial institutions fail to comply with the reporting requirements."4/ While the fact that the government was seemingly satisfied with the banking industry's compliance with the Act is not an excuse to become complacent about the reporting requirements, it was certainly evidence of the relative lack of importance the government placed on the reporting requirements imposed under the Act.

In the intervening four years between the 1981 GAO report and public revelations of the Bank of Boston situation, the federal government did little to alert the financial industry to any serious compliance problems. As reported to Congress on October 29, 1985 by William J. Andersen of the General Accounting Office, a then recently commissioned study demonstrated that the agencies "have given Bank Secrecy examinations a relatively low priority."5/ The study showed the agencies had allocated insufficient resources to this area, used relatively inexperienced examiners, failed to establish sufficient procedures for compliance examinations, and failed to adequately document their examinations. GAO found a lack of communication and coordination between the Treasury Department, charged with enforcement of the Act, and the regulatory agencies, whose task it was to determine adequate compliance.

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With limited exceptions, such as in south Florida, the majority of banking institutions apparently believed they were complying with the reporting requirements. By 1985, however, it became clear that the government's lack of emphasis on currency reporting requirements was apparently being mirrored by some financial institutions which were charged with filing CTRs. The recent rash of fines imposed on some of the banking industry's larger members evidences what in fact was a less than total commitment by the industry as a whole. Thus, for the first time the industry was awakened to its less than exemplary record of compliance with the Act.

Present Application of the Act

While there has been an obvious lack of emphasis on the reporting requirements from both government and industry, recent events starting with Operation Greenback have turned this situation around. The importance of full compliance with the reporting requirements has been brought home to financial institutions through the substantial penalties levied against several institutions as well as the heightened Congressional and media attention paid to the money laundering problem. Fortunately, both government and the financial industry have reacted positively and have instituted actions to take the steps necessary to ensure full compliance with the Act.

A large number of banking institutions recently conducted reviews of their own procedures for the filing of CTRs. This has resulted in a marked increase in the number of CTRs filed -- from 700,000 in 1984 to approximately 2,000,000 in 1985 and an estimated 3,000,000 in 1986.[6/] The increase in filings has necessitated a 500% increase in the IRS staff required to process the forms.[7/] Additionally, many institutions have implemented new procedures to train their tellers and other personnel on the completion of CTRs. A number of banks have created new internal audit procedures to ensure compliance and some have hired compliance officers to oversee their reporting operations. Officials from some 6,200 banks have viewed a Department of Justice educational tape on money laundering techniques. As pointed out by U.S. Assistant Attorney General Stephen Trott, the American Bankers' Association is actively promoting the education of bank employees regarding money laundering and compliance with reporting requirements.[8]

The agencies, too, have taken steps to ensure stepped-up compliance with the Act. For example, until recently the banks themselves decided which of their customers could be deemed exempt from reporting requirements. A small number of banks routinely submitted their exemption lists voluntarily to Treasury for its review due to the uncertainty of who was

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entitled to an exemption. Under a regulation made effective January 1, 1986, exemptions from reporting requirements are now subject to review by the IRS.9/ Recent regulatory changes have also brought casinos under the ambit of the reporting requirement.

The government has also established or put new emphasis on data retrieval programs to make more effective use of the information collected, such as the Treasury Financial Law Enforcement Center in Washington, D.C., involving specialists from the IRS, Customs, FBI, DEA, and Justice Department.10/ The agencies have instituted new examination procedures geared toward a more comprehensive review of compliance with the Act and have established an Interagency Working Group to help ensure coordination among the various agencies involved in this area.11/

Instead, however, of taking the time to properly review the results of this new heightened enforcement of existing provisions of the Act to determine if the benefits to law enforcement justify the burdens placed upon the government and the banking industry, bills have been submitted to Congress which threaten to stretch this recordkeeping, document retention and reporting law beyond its logical limits. These bills would impose even greater demands on the industry without a correlative benefit to government. The bills presented to Congress threaten to distort the Act into something it is not, was never intended to be, and should not become.

Proposed Amendments to Title 12 - Right to Financial Privacy Act ("RFPA")

As a former supervisor of Treasury law enforcement agencies with jurisdiction over this area, I am well-acquainted with the importance of government having reasonable access to the financial records of suspected drug dealers and other criminal elements. That is why during my tenure at Treasury I initiated efforts in 1969 to do something about Swiss bank secrecy, which led to a treaty with Switzerland to assist U.S. enforcement particularly in organized crime cases.

I also initiated and supervised a federal program directed at the illegal profits of the drug traffickers, the Treasury/IRS Narcotics Trafficker Tax Program ("NTTP"), which focused on the financial and tax records of suspected drug dealers. In only 17 months, from July 1, 1971 through December 31, 1972, the program resulted in 1,175 major drug dealers coming under full net worth tax investigation and tax action taken against 1,239 minor traffickers. Collection and seizures amounted to $15,625,792, which amount exceeded the cost of the

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program. (See Exhibit "A" - The Twelve Month and Seventeen Month Reports issued by the Treasury Department, Office of Law Enforcement). By prosecuting violators under the Tax Code, this highly successful and cost-effective program resulted in the indictment, conviction and imposition of fines on unprecedented numbers of drug traffickers and disruption of their operations. Unfortunately, that program was phased out after I left Treasury. It should be revived if we are serious about effective and cost-efficient law enforcment against drug traffickers.

The importance of financial information to a specific criminal or civil investigation does not, however, warrant transforming the banks into an arm of the federal prosecutor. This is precisely what the proposed amendments to the Right to Financial Privacy Act contained in the bills presented to Congress would do.

Reacting to the Supreme Court decision in United States v. Miller, which held that a customer of a financial institution has no standing to contest illegal government access to his bank records, Congress in 1978 debated long and hard -- more than 100 privacy bills were introduced and more than 40 days of hearings were held in the House alone -- on the Right to Financial Privacy Act. What was debated for so long was how to permit maximum law enforcement use of financial records while protecting the rights of citizens to entrust their money to a financial institution with the knowledge that their personal financial records would not be turned over to the government without a legitimate reason. Both the majority and minority House reports recognized this balancing of interests as the primary focus of the RFPA:

> Title XI is intended to protect the customers of financial institutions from unwarranted intrusion into their records, while at the same time permitting legitimate law enforcement activity. Therefore, the title seeks to strike a balance between customers' rights of privacy and the need of law enforcement agencies to obtain financial records pursuant to legitimate investigation. [Majority Report]
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> * * *
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> Against the needs of the government, it is necessary to balance the need for privacy of each individual. A delicate balance must be struck because claims on both sides are legitimate. [Minority Report][12/]

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Congress should not now, in the name of the admirable goal of reducing money laundering and the drug trafficking intertwined with it, act too hastily and destroy that delicate balance it reached in 1978, particularly when there is little or no proven benefit to be derived therefrom. The rights of the overwhelming majority of bank customers who engage in proper and legal transactions should not be abrogated simply because prosecutors are able to relate to this Subcommittee several stories about the "one who got away".

The RFPA, in its present form, already allows the government to: (1) obtain a customer's financial records pursuant to a court order, judicial or administrative subpoena or, under certain circumstances, simply a formal written request to the financial institution; (2) delay the bank's notice to the customer of the inquiry if there is reason to believe the notice will lead to tampering with evidence, flight from prosecution or otherwise seriously jeopardize an investigation of criminal conduct; (3) receive information voluntarily provided by financial institutions regarding the possible violation of a criminal statute; and (4) share with another agency financial records which are relevant to a legitimate law enforcement inquiry of that agency.

The bills seeking to amend the RFPA relax the standards under which banks are to provide the government with information about their customers and increase the information and records to be provided. In combination with the proposed amendments to Title 18 of the U.S. Code which would subject banks and their employees to criminal prosecution for conducting a transaction in which there was any reason to believe the funds were illegally derived, the proposed changes to the RFPA would force banks into the untenable position of spying on the very customers whose trust is essential to their survival. Financial institutions would be forced to report transactions involving the slightest suspicious behavior, for fear of being prosecuted for engaging in a money laundering transaction. Thus, the proposed amendments to Title 12 subvert one of the main purposes of the RFPA, which, as stated by Congressman Whalen, co-sponsor of the principal bill finally enacted, was to "restore the record holders, the banks and credit card companies, to their proper role as impartial custodians of records."[13/]

Additionally, the Administration's bill would allow government agencies to trade financial records in the event they "may be" relevant to a matter simply within the agency's jurisdiction. This new power would turn traditional notions of law enforcement on their head. Agencies could trade information on our everyday financial transactions until they

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find or create some reason for an investigation. Such an Orwellian atmosphere in which our financial transactions are subject to daily review by the government is an intrusion of privacy rights of the highest order.

There is simply no precedent for the type of unwarranted governmental power which would result from the proposed amendments. I do not believe it to be an exaggeration to state that if the procedures proposed in the Administration's bill are enacted, the trust upon which banking institutions depend so dearly will be severely damaged. Banks would in effect become assistant prosecutors or at the very least well-placed snitches who keep tabs on the local citizenry. If the public comes to believe that their bank on the corner is acting as a conduit of information for a host of government agencies, many upstanding citizens may find alternatives for retention of their funds.

The requirements Congress put in the RFPA are reasonable and the minimum necessary for protection of our privacy. These Congressionally created "obstacles" are no greater than Miranda warnings or probable cause and warrant requirements or other limitations on the prosecutor which are designed to protect the vast majority of law-abiding citizens. For instance, each and every time federal law enforcement officials have sought to delay notification to the bank customer that his records were being obtained, that request has been granted. The government, however, has made little use of this provision, seeking a delay of notification only 48 times since 1978.[14/] The loss of confidence that further encroachment on our privacy may entail is too high a price to pay when the new stepped-up compliance with the Act, as it presently exists, has already resulted in significant increases in the filing of CTRs.

Proposed Amendment to 18 U.S.C. -- Making Money Laundering a Crime

Although there is a respectable body of opinion that current law provides adequate bases for dealing with money laundering, there appears to be need of a statute punishing individuals who knowingly and intentionally participate in the laundering of illegally derived funds. We must be careful, however, not to create a law whose effect will be to punish the innocent bank teller or official who is unsuspectingly made a party to the money laundering scheme or the bank with a faithless teller or official. For this reason, Congress should reject any money laundering legislation which imposes criminal liability on bank personnel for anything less than knowledge that the transaction they are handling involves illegal funds

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and specific intent to engage in that transaction for the purpose of laundering those funds. Unfortunately, none of the bills presently before Congress impose such a standard.

The application of criminal penalties under the "reason to know", "reckless disregard" or "substantial risk" standards which appear in the bills is not only unfair but also unworkable. These bills would question whether the teller had "reason to know" if an otherwise perfectly proper and everyday transaction involves money from some other illicit transaction, which occurred at some earlier time, at some other place at which the teller was not present. The problems in applying such a standard are obvious, especially given the fact that most tellers have only a high school education and typically remain in the job less than a year.

When does a teller have "reason to know" or act with a "substantial risk" that an otherwise normal transaction involves tainted funds? What if an ex-convict deposits $5,000 in cash? Must a teller file a report when an individual under indictment for embezzlement obtains a cashier's check for $6,500? What if one teller read the story in the newspaper about the indictment and another teller did not? Are they held to different standards? What if a customer buys a new car and starts dressing in more expensive clothes? Would a teller have to report all transactions close to but under $10,000? How close? $9,800? $9,000? $8,000? Must a teller report the transaction of a customer rumored in the neighborhood to be involved in organized crime? What if it merely involves a $150 deposit?

Additionally, what is the teller to do if he or she actually suspects the transaction to involve illegally derived funds? Under most of the bills it would be illegal for the teller to engage in the transaction. Thus, the teller would be forced to confront the alleged money launderer. This would, of course, result not only in warning the alleged criminal that his actions will be reported to law enforcement officials, but also place the teller in a potentially dangerous situation. Moreover, when the overly suspicious teller -- which is exactly what these bills would force the teller to become -- confronts an individual who is innocently engaged in a legal and proper transaction, the bank is placed into the role of accuser and thereby risks losing its customers as well as impairing the long term trust of those individuals in financial institutions in general.

These bills turn the emphasis from the criminal activity of the drug dealer to the bank teller -- to the average law abiding man and woman. That was never the purpose of the Act

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and never should be. We should not allow the federal law enforcement community's attention and efforts to be diverted from targeting drug dealers to targeting bank tellers and banks. I am not aware that we did not have a sufficient number of drug dealers and others in organized crime as targeted individuals. We do not need prosecution of tellers on weakened or no standards of intent to give the impression that we are succeeding in drug law enforcement.

For these reasons, if Congress decides to enact a money laundering statute, it should be limited to the real targets, those who intentionally and knowingly engage in transactions involving criminally derived funds for a criminal purpose. Such a standard would encompass the bank teller or official who acts with criminal intent without refocusing the emphasis from the criminal activity of the drug dealer, where it should be. While Congressman Hughes' bill, H.R. 1474, comes closest to the necessary standard, it does not include the "intent" standard necessary to protect the teller who, with no intent to launder funds, conducts a transaction with funds he or she suspects were derived illegally but for fear of personal safety, or to avoid embarrassing a long time customer who is in fact not laundering funds, does not confront the individual.

Proposed Amendments to Title 31 -
The Currency and Foreign Transactions Reporting Act

As has been amply demonstrated in the Congressional hearings, the recent problems associated with the Act were due to a lack of administration, enforcement and compliance with existing regulations, and not to the lack of an existing legislative or regulatory framework. The creation of new reporting requirements will serve only to hinder the process that is already in existence, which now is being properly applied. During a time of personnel cutbacks in government agencies, the IRS must now process between three and four times the number of transaction reports it handled in 1984. Indeed, both former Assistant Treasury Secretary John M. Walker, Jr. and present Assistant Secretary Francis A. Keating, II reported to Congress that they would not favor lowering the $10,000 limit for filing CTRs, citing the already monumental task facing the IRS in processing the forms they now receive.[15/]

Instead, the solution is to ensure compliance with existing laws and regulations and to encourage coordination and communication both among the government agencies and between those agencies and financial institutions. The interest of the banking industry in working to stamp out money laundering is not motivated merely by a fear of being fined or avoiding negative publicity. Banks in this country, as you well know,

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cannot survive without the trust of their customers. No bank wishes to tarnish its reputation and jeopardize the trust of its customers by accepting illegally derived funds. Thus, a coordinated joint effort between government and industry, could result in the type of law enforcement advances which Congress and all parties involved are interested in achieving.

Just one example of how coordination between government and industry could prove beneficial was recently suggested to Congress by Treasury Assistant Secretary Francis A. Keating, II.[16/] Presently, currency transaction reports must be submitted on official IRS forms. If, instead, the agencies and the financial institutions could work together to permit bank generated computerized forms, which would contribute to speed and efficiency, everyone would benefit. Such coordination might even result in the establishment of a computer network where the information could be fed into IRS data systems directly from the banks. (At present the IRS has some 310 employees processing the CTR forms so that they can be fed into the Treasury Enforcement Communications System (TEC) of the U.S. Customs Service.)[17/] The information could be entered by the banks more quickly and accurately and at less cost, the data could be received and filed with expedition, and law enforcement officials would have easier and earlier access to the data for whatever value it may have.

Thus, rather than inundating both financial institutions and the agencies that regulate them with increased administrative requirements, cooperation on the best methods to apply already existing administrative requirements will provide better results and at less cost to government and industry. It is simply unfair and imprudent to impose an adversarial atmosphere through such proposed amendments as a $10,000 fine for the mere negligent failure to file a single CTR. An automatic $10,000 fine for the mere negligent failure to file a few CTRs is totally out of proportion to the conduct being punished.

The foregoing reflects my general comments on the policy issues raised in the various bills now being considered by the Congress. My specific comments, including proposed wording changes, on S. 571 and S. 2306, two measures under active consideration by the Committee, are set out in Exhibit B.

CONCLUSION

If Congress enacts a statute making money laundering a crime, it should be limited to and directed at the real targets, namely individuals who knowingly and intentionally

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participate in the laundering of illegally derived funds. Otherwise, what is required is not further regulation or new laws, but rather further cooperation between government and industry to make the Act and other available enforcement tools useful instruments in the war on drugs. Instead of acting to gut the privacy protections Congress has afforded to individuals, or to greatly increase the administrative burdens of both the industry and the agencies, all concerned should continue to open up channels towards cooperation and take time to assess what the improvements over the last year have done to combat the money laundering problem.

The proposed amendments to Titles 12 and 31 are not only counterproductive to the goal of abating money laundering but are also imprudent. In this time of fiscal austerity under Gramm-Rudman-Hollings, the proposed bills threaten to appropriate funds and manpower in the least productive manner and further lessen our ability to require that the law enforcement community concentrate on the real targets. This would be particularly wasteful and improvident at a time when the banking agencies must devote so many of their resources to the supervision of failed and failing financial institutions. Much more productive use of funds could be made, for instance, by reinstating the low cost yet highly successful Treasury/IRS Narcotics Trafficker Tax Program (NTTP) which resulted in the indictment, conviction and fining of large numbers of drug dealers and disruption of their operations. The NTTP concentrated on the ill-gotten gains of drug traffickers but did so in an administratively workable manner utilizing bank records retained under the Act.

Congress should continue its oversight activities which have greatly contributed in the last year to strengthening the emphasis and utilization of the Act. Time should be taken to allow the increased attention paid to the Act and increased enforcement activities to be evaluated. At that time Congress will be in a better position to evaluate the cost effectiveness of the program and to properly balance the need for additional legislative requirements against the increased administrative burden such requirements will place on the agencies and the financial industry as well as the increased government intrusion into the privacy rights of our citizens.

Congress should give priority to oversight activities on the programs and operations of the various Federal enforcement agencies with the aim of determining the best methods of combatting organized crime, with particular emphasis on drug trafficking, since that overall effort has been patently unsuccessful. The priorities of federal drug enforcement should be re-examined. The federal organizational arrangement

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and interrelationship should be reviewed. For instance, the Customs Service -- the agency with anti-smuggling experts and a worldwide network of sister customs agencies -- is presently not authorized to investigate and handle drug smuggling cases. Congressional review should examine the best way to get at the illegal profits of drug traffickers. For instance, should the government put scarce resources into reviving the Treasury/IRS NTTP or into additional personnel for processing CTR's? Such a review should also examine the federal, state and local drug enforcement relationship, responsibilities and priorities.

These are some of the important issues that must be addressed if we are to improve our enforcement efforts against drug traffickers. While the banking industry must be prepared to do its part to combat money laundering, Congress should not allow the federal law enforcement community to divert its attention and reorder its priorities away from drug traffickers and towards bank tellers, other bank officials or banks themselves on weakened or no standards of knowledge and intent to give the impression we are succeeding in drug enforcement.

Thank you, Mr. Chairman.

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FOOTNOTES

1/ Remarks of William Nickerson before the 21st Annual Banking Law Institute, May 1, 1986, as reported in BNA, Daily Report for Executives, May 2, 1986, p. A-17.

2/ Comptroller General's Report to the Congress, "Bank Secrecy Act Reporting Requirements Have Not Yet Met Expectations, Suggesting Need for Amendment," July 23, 1981, p. iv.

3/ Id. at iv.

4/ Id. at ii.

5/ Testimony of W. J. Anderson, Director, General Government Division, GAO, before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, Oct. 24, 1985, pp. 5-6.

6/ Testimony of Richard C. Wassenaar, Assistant Commissioner (Criminal Investigation), IRS, before the Subcommittee on Financial Institutions of the Committee on Banking, Finance and Urban Affairs, United States House of Representatives, April 16, 1986.

7/ Id.

8/ Testimony of Stephen Trott, Assistant Attorney General (Criminal Division) of the U.S. Department of Justice before the Financial Institutions Subcommittee of the Banking Committee, United States House of Representatives, April 23, 1986.

9/ IRS Memorandum of Understanding, IR 85-125.

10/ Houston Post, p. 22, December 12, 1985.

11/ Testimony of Assistant Secretary for Enforcement, U.S. Dept. of the Treasury, Francis A. Keating, II, before the Subcommittee on Financial Institutions of the Committee on Banking, Finance and Urban Affairs, United States House of Representatives, April 17, 1986.

12/ House Report No. 95-1383, p. 33, U.S.C.A.N. p. 9305, id. at 246, U.S.C.A.N. p. 9375.

13/ 124 Cong. Rec. 33311 (October 3, 1978).

14/ BNA Report No. 92, p. A-5 (May 13, 1986).

15/ Testimony of John W. Walker, former Assistant Secretary for Enforcement, U.S. Dept. of the Treasury, before the Subcommittee on Financial Institutions of the Committee on Banking, Finance and Urban Affairs, United States House of Representatives, March 5, 1985. Keating testimony, supra.

16/ Id. at 4.

17/ Testimony of Brian Bruh, Director of the Office of Investigations (Criminal), IRS, before the Senate Committee on Banking, Housing and Urban Affairs, May 1, 1986 and subsequent telephone discussion.

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EXHIBIT A

Twelve Month Report of the Treasury/IRS Narcotics Trafficker Tax Program

During the first year of operation--July 1, 1971, to June 30, 1972--the Treasury/IRS Narcotics Trafficker Program has accomplished the following:

1. 793 major targets in 40 states, 53 metropolitan areas and the District of Columbia were selected by Treasury's Target Selection Committee and referred to the IRS for intensive tax investigation (see attached Table I). Under the direction of IRS Commissioner Johnnie M. Walters, 410 Treasury Agents and 112 support personnel are presently conducting the intensive tax investigations. In addition, 565 minor traffickers are under tax action.

2. $54.2 million in taxes and penalties have been assessed under the program, of which more than $8.5 million has already been collected in the form of cash or valued property. This is $1 million more than the $7.5 million appropriated for the program by Congress. We are now using the drug traffickers' illegal profits to put them out of business (see attached Table II).

3. Six men have been convicted on criminal tax charges; 15 other criminal tax cases are pending in Federal District Courts in New York, Miami, Detroit, Los Angeles, San Francisco, Indianapolis, Baltimore, and Washington, D.C.; and another 35 investigations have been completed with prosecution recommendations. Investigations were completed in an additional 78 cases with civil assessments and penalties determined in 64 cases.

We believe this represents a substantial achievement. By focusing attention on the persons responsible for the narcotics distribution, this program is making a major additional contribution to the President's offensive against drug abuse.

The word for the drug traffickers is to get out of the illegal drug traffic or face up to intensive tax investigation. This word should be spread in every city and town in the United States. We have institutionalized this program. Everyone in this illegal business should realize that they will be subjected to tough tax scrutiny.

The program's objectives--to take the profit out of the illegal traffic in narcotics and thereby further disrupt the traffic--are accomplished in two ways:

1. Major targets: by conducting systematic tax investigations of middle and upper echelon narcotics traffickers, smugglers, and financiers. These are the people who frequently are insulated from the daily operations of the drug traffic through intermediaries.

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2. Minor targets: by the systematic drive underway to seize--to be applied to taxes and penalties owing--the substantial amounts of cash that are frequently found in the hands of minor narcotics traffickers--those below the middle and upper echelon level.

Computers are now being used in this program to facilitate the year in, year out scrutiny of the finances of these narcotics traffickers. By computerizing our information, we will be able to examine systematically and quickly each major and minor trafficker targeted under this program.

Although all of the penalties and taxes that have been assessed may not be collected, the impact of this program on the narcotics traffic is already substantial and increasing each month.

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TWELVE MONTH REPORT

TABLE I

STATE	METROPOLITAN AREAS	TARGETS	COMPLETED INVESTIGATIONS
Alabama	Mobile	2	
Alaska	Anchorage	1	
Arizona	Phoenix-Tucson-Yuma	35	4
Arkansas	Little Rock	2	
California	Los Angeles-San Diego	39	10
	San Francisco-Oakland	33	3
Colorado	Denver	8	
Connecticut	Hartford	12	3
Delaware	Wilmington	1	
District of Columbia	Washington	17	4
Florida	Miami	64	17
Hawaii	Honolulu	10	2
Georgia	Atlanta	19	6
Illinois	Chicago	40	7
	Springfield	4	
Indiana	Indianapolis	8	2
Louisiana	New Orleans	12	4
Maine	Bangor	1	
Maryland	Baltimore	6	1
Massachusetts	Boston	12	1
Michigan	Detroit	53	6
Minnesota	St. Paul- Minneapolis	2	
Mississippi	Gulfport	1	
Missouri	St. Louis-Kansas City	10	2
Nevada	Las Vegas	3	

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STATE	METROPOLITAN AREAS	TARGETS	COMPLETED INVESTIGATIONS
New Hampshire	Portsmouth	2	1
New Jersey	Newark-Camden	52	6
New Mexico	Albuquerque	9	2
New York	Albany	4	
	Buffalo	9	
	New York City & Suburbs	130	30
North Carolina	Greensboro-Charlotte	16	1
Ohio	Cincinnati-Dayton	9	
	Cleveland	7	
Oregon	Portland	11	1
Pennsylvania	Philadelphia	40	1
	Pittsburgh	15	5
Rhode Island	Providence	1	
South Carolina	Columbia	5	1
Tennessee	Nashville-Memphis	5	
Texas	Austin-Houston-El Paso	41	11
	Dallas	3	1
Utah	Salt Lake City	2	
Virginia	Richmond-Norfolk	24	
	Arlington-Alexandria		
Washington	Seattle	11	2
West Virginia	Parkersburg	1	
Wisconsin	Milwaukee	1	
		793	134

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TWELVE MONTH REPORT

TABLE II

Major Target Assessments:	Number	Amounts
Regular Assessments	18	$ 4,373,126
Jeopardy Assessments 1/	19	18,764,281
Tax Year Termination Assessments 2/	23	7,974,616
Total	70	$31,112,023
Minor Target Assessments: 3/		
Jeopardy Assessments	36	$ 863,712
Tax Year Termination Assessments	529	22,256,438
Total	565	$23,120,150
Total Assessments involving Narcotic Traffickers		$54,232,173

Seizures involving Narcotic Traffickers:

	Major Targets	Minor Targets	
Currency	$ 1,763,213	$ 5,449,923	$ 7,213,136
Property	86,738	1,249,828	1,336,566
Total Dollars Seized			$ 8,549,702

Cases Recommended for Prosecution	35
Criminal Tax Cases in U. S. Courts awaiting Trial	15
Criminal Tax Convictions	6

1/ Jeopardy assessments are assessments of taxes made where a return has been filed or should have been filed, but where circumstances exist under which delay might jeopardize the collection of the revenue.

2/ Termination of tax year is a computation of the tax due and assessment made where the time for filing the return has not become due where circumstances exist under which delay might jeopardize collection of the revenue.

3/ These are assessments made as a result of seizures by other law enforcement agencies of cash or other assets against current income of narcotic traffickers where delay might jeopardize collection of the revenue.

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Seventeen Month Report of the Treasury/IRS Narcotics Trafficker Tax Program

During November, Treasury Agents and support personnel of the Internal Revenue Service seized and collected $2.4 million from narcotics traffickers and made assessments of $5.4 million. In addition, 68 new major targets were selected and 157 minor targets were placed under tax action.

In the Courts, 2 traffickers were convicted, and 4 indictments were returned. The Treasury has recommended an additional 11 cases for prosecution.

The additional targets expanded the program into one new state, South Dakota, and eight metropolitan areas--Aberdeen, South Dakota; Augusta, Georgia; Peoria, Illinois; Annapolis, Maryland; Reno, Nevada; Chattanooga, Tennessee; Fort Worth, Texas, and Bridgeport, Connecticut.

The 17 months result of this program are as follows:

1,175 Major Targets and 1,239 Other Traffickers

In 46 states, 82 metropolitan areas and the District of Columbia, 1,175 targets have been selected by Treasury's Target Selection Committee and referred to the IRS for intensive tax investigation (see attached Table I). Under the direction of IRS Commissioner Johnnie M. Walters, 550 Treasury Agents and 112 support personnel are presently conducting these investigations.

The Congress has passed a supplemental appropriation of $4.5 million which will increase the number of Treasury Agents to 648.

In addition, 1,239 minor targets traffickers are under tax action.

$82.5 Million Assessed--$15.6 Million Collected

$82.5 million in taxes and penalties have been assessed under the program, of which more than $15.6 million have already been collected. The drug traffickers illegal profits are being used to put them out of business (see attached Tables II and III).

20 Convictions + 44 Indictments + 61 Prosecution Recommendations = 125

Twenty men have been convicted on criminal tax charges; 44 other criminal tax cases are pending in Federal District Courts in Atlanta, Miami, Detroit, Los Angeles, San Francisco, Seattle, Boston, Indianapolis, Baltimore, and Washington, D.C., and in other areas; and another 61 investigations have been completed with prosecution recommendations (see attached Tables II and III).

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SEVENTEEN MONTH REPORT
DEPARTMENT OF THE TREASURY TABLE I

TREASURY/INTERNAL REVENUE SERVICE NARCOTICS TRAFFICKER PROGRAM

RESULTS AS OF DECEMBER 1, 1972

STATE	METROPOLITAN AREAS	TARGETS	COMPLETED INVESTIGATIONS
Alabama	Mobile	13	2
Alaska	Anchorage	1	
Arizona	Phoenix-Tucson-Yuma	61	9
Arkansas	Little Rock	3	
California	Los Angeles-San Diego	45	22
	San Francisco-Oakland	42	7
Colorado	Denver	12	2
Connecticut	Hartford-Bridgeport	16	2
Delaware	Wilmington	1	
District of Columbia	Washington	22	5
Florida	Miami-Jacksonville	95	27
	Tampa-Orlando		
Hawaii	Honolulu	10	1
Georgia	Atlanta-Augusta	31	12
Illinois	Chicago-Springfield	61	7
	Peoria		
Indiana	Indianapolis-Gary	12	3
Iowa	Des Moines	4	
Kansas	Lawrence	1	
Kentucky	Louisville-Covington	6	
	Newport		
Louisiana	New Orleans	16	2
Maine	Bangor	1	
Maryland	Baltimore-Annapolis	14	3
Massachusetts	Boston	24	3
Michigan	Detroit	71	13
Minnesota	St. Paul-Minneapolis	5	

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STATE	METROPOLITAN AREAS	TARGETS	COMPLETED INVESTIGATIONS
Mississippi	Gulfport	3	
Missouri	St. Louis-Kansas City	21	8
Nebraska	Omaha	3	
Nevada	Las Vegas-Reno	5	
New Hampshire	Portsmouth	4	2
New Jersey	Newark-Camden-Trenton	67	7
New Mexico	Albuquerque	11	5
New York	Albany	14	1
	Buffalo-Rochester	20	3
	New York City	157	55
North Carolina	Greensboro-Charlotte	17	1
Ohio	Cincinnati-Dayton-Columbus	17	
	Cleveland-Toledo	24	
Oklahoma	Oklahoma City	3	
Oregon	Portland	18	4
Pennsylvania	Philadelphia	42	3
	Pittsburgh	39	6
Rhode Island	Providence	6	
South Carolina	Columbia	5	2
South Dakota	Aberdeen	1	
Tennessee	Nashville-Memphis-Chattanooga	8	
Texas	Austin-Houston-El Paso	51	11
	Dallas-Ft. Worth	8	2
Utah	Salt Lake City	6	
Virginia	Richmond-Norfolk	28	2
	Arlington-Alexandria		
Washington	Seattle	24	5
West Virginia	Parkersburg	1	
Wisconsin	Milwaukee	5	1
		1175	239

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TABLE II

Major Target Assessments:	Number	Amounts
Regular Assessments	189	$11,052,523
Jeopardy Assessments 1/	43	19,450,434
Tax Year Termination 2/	51	9,172,179
Total	283	$39,675,136
Minor Target Assessments: 3/		
Jeopardy Assessments	91	$ 2,862,639
Tax Year Termination	1148	39,997,320
Total	1239	$42,859,959
Total Assessments involving Narcotic Traffickers		$82,535,095

Collections and Seizures involving Narcotic Traffickers:

	Major Targets	Minor Targets
Currency	$3,163,904	$10,237,426
Property	141,463	2,082,999

Total Dollars Seized & Collected	$15,625,792
Cases Recommended for Prosecution	61
Criminal Tax Cases in U.S. Courts awaiting Trial	44
Criminal Tax Conviction	20
Total Criminal Cases	125

1/ Jeopardy assessments are assessments of taxes made where a return has been filed or should have been filed, but where circumstances exist under which delay might jeopardize the collection of the revenue.

2/ Termination of tax year is a computation of the tax due and assessment made where the time for filing the return has not become due where circumstances exist under which delay might jeopardize the revenue.

3/ These are assessments made as a result of seizures by other law enforcement agencies of cash or other assets against current income of narcotic traffickers where delay might jeopardize collection of the revenue.

Treasury Department
Office of Law Enforcement

December 1, 1972

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SEVENTEEN MONTH REPORT

U. S. Treasury Department
Office of Law Enforcement

TABLE III

Metropolitan Areas	Major Target Program						Minor Target Program			Collections
	Number	Assessments	Dollars Seized	P.R.	I.	C.	Number	Assessments	Dollars Seized	
Atlanta, Ga.	14	$ 415,977	$ 28,511	5	4	0	37	$ 476,433	$ 136,797	$ 61,877
Boston-Houston-El Paso, Tex.	15	1,576,515	54,720	3	1	0	91	1,629,038	817,487	
Baltimore, Md. - Washington, D.C.	11	1,362,862		3	1	5	2	238,814	14,879	93,636
Boston, Mass.	5	5,561,815	22,183	2	1	1	67	2,132,787	542,582	
Buffalo, N.Y.	3	16,383		1	0	0	19	149,326	82,122	
Cleveland, Ohio				0	0	0	12	690,666	111,325	
Chicago-Springfield, Ill.	10	311,713	16,850	3	2	0	78	2,264,421	178,008	
Detroit, Mich.	17	1,252,166	13,595	4	3	2	69	1,310,544	367,806	692,000
Charlotte-Greensboro, N.C.	3	163,933	15,260	2	0	1	34	320,680	53,989	10,052
Miami-Jacksonville-Tampa, Fla.	32	10,183,663	1,300	2	11	4	49	762,032	593,594	142,877
Los Angeles-San Deigo, Calif.	25	915,641	59,238	4	1	1	177	10,291,836	1,325,802	
Newark-Camden-Trenton, N.J.	14	1,721,619	1,656	0	2	0	27	1,502,991	669,319	
New York City	51	7,503,738	1,621,027	10	3	1	108	7,794,275	3,766,264	
Philadelphia, Penna.	5	206,195	16,000	1	0	0	41	714,073	320,447	
Phoenix-Tucson, Ariz.	10	280,422	5,620	3	2	0	58	1,416,699	337,765	
Pittsburgh, Penna.	4	36,689	2,853	3	1	1	11	451,202	120,752	8,114
San Francisco-Oakland, Calif.	12	760,888	79,686	2	3	0	61	2,582,650	531,163	
Seattle-Tacoma, Wash.	5	137,838	35,000	1	2	1	13	224,932	122,704	
St. Louis, Mo.	9	1,019,793	5,573	2	2	2	8	247,712	27,071	
Richmond-Norfolk-Arlington, Va.	3	166,736	11,276	1	0	0	7	264,280	15,836	26,895
Other	33	4,100,742	276,154	9	5	1	270	7,341,468	1,951,073	
Totals	283	$39,675,136	$ 2,363,888	61	44	20	1239	$42,859,959	$ 12,320,425	$ 1,041,181

Dollars Seized includes both property and currency
P.R. - Cases Recommended for Prosecution
I. - Criminal Cases in U. S. Courts awaiting Trial
C. - Criminal Convictions

December 1, 1972

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Exhibit B

Comments on S.571 and S.2306

As indicated in the body of my statement, I seriously question whether any legislation -- with the possible exception of a tightly drawn statute rendering knowing and intentional money-laundering illegal -- is needed. With the realization, however, that somewhat broader legislation is being seriously considered, I offer the following comments on S.571 and S.2306, which are now pending before the Committee, with the aim of focusing attention on the wrongdoer -- such as the drug trafficker who is trying to launder illegally derived funds -- while avoiding creating new and unnecessary burdens for the neutral and innocent bank teller or other bank official. It is my belief that in this manner the essential purpose of the Currency and Foreign Transactions Reporting Act of 1970, which is primarily record-keeping, would be preserved, while the objective of making money laundering more difficult would be enhanced. Stated briefly, I believe the proposed bills should be more clearly directed at persons who knowingly and intentionally are seeking to evade reporting requirements in connection with their illegal gains. Legislation should not be trying to "circle the globe" to drag in innocent bank personnel or ordinary citizens depositing funds obtained entirely legitimately.

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My specific comments on the bills are set forth below:

Comments on S.571

1. I believe there is serious question whether the broad subpoena and related powers that would be conferred on the Secretary of the Treasury by the amendments beginning at line 8 on page 2 and ending on line 14 of page 2 are necessary. To my knowledge there has been no showing that existing enforcement powers -- which include access to judicially supervised subpoenas in appropriate circumstances -- are generally inadequate. A broad, unrestrained grant of authority such as that envisioned in the amendments will allow the government to circumvent the protections conferred by the Right to Financial Privacy Act and will predictably lead to fishing expeditions. It simply is not justified. In this respect, I believe the present language is facially deficient in failing to limit the exercise of the subpoena powers to situations in which there is reasonable basis to believe that a violation has been committed. If this provision goes forward -- and I urge that it be dropped -- the following changes would need to be made to help avoid the possibility of fishing expeditions:

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a. Page 2, line 9: After "(3)" insert the following:

> "to the extent not inconsistent with the provisions of the Right to Financial Privacy Act, as amended, and notwithstanding section 12 U.S.C. § 3413(d), for the purpose of investigating any offense connected with the administration or enforcement of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 which the Secretary has probable cause to believe has been committed,"

b. Page 3, lines 1-7: Delete all material.

c. Page 3, line 8: Change "(c)" to "(b)".

d. Page 3, lines 12-14: Delete all material following "by" and insert "the Secretary of the Treasury or such supervisory level official of the Department of the Treasury as the Secretary may specifically authorize by prior written delegation."

The amendments suggested above are what I regard as the minimum safeguards that should accompany the subpoena authority if it continues to be included in the bill. I wish to reiterate, however, that I have seen no evidence that such broad authority is required, and, accordingly, I regard this further aggrandizement of authority as unnecessary and unwise.

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2. The proposed revision of the civil penalty provision applicable to domestic financial institutions and their officers and employees is in my view unnecessary and unwise. It would shift attention to banks and their employees when the problem which should be addressed is drug traffickers and the like. The proposed amendment fails to discriminate in any way between reporting failures where the funds involved are entirely legitimate and reporting failures in circumstances where illegally derived funds are present. In raising the possible penalties to the amount of the transaction, the bill would seem to ignore the principal of proportionality. (There are numerous more serious violations of law for which the civil and criminal penalties provided are comparatively insignificant.) If the revision is to be made, I urge adoption of the following changes:

a. Page 3, lines 18-19: Delete material from "domestic" through "a".

b. Page 3, line 23: Insert the word "willfully" before "causing".

c. Page 3, line 24: Insert after "violation" "and a domestic financial institution knowingly permitting either such violation."

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d. Page 4, line 1: Insert after "transaction" ", not to exceed $25,000".

e. Page 4, line 3: Before the comma insert "for funds which such institution or other person knows have been obtained in violation of the laws of the United States or any political subdivision thereof".

3. As currently drafted, the bill fails to make an entirely technical conforming amendment to reflect changed section numbers. This can be corrected by inserting the following between lines 4 and 5:

> "(2) by deleting the two references to "section 5318(2)" in the second sentence of paragraph (1) and inserting in lieu thereof "section 5318(a)(2)"; and"

4. The provision adding specific civil penalties for violations of section 5314 should only hold banks liable where they knowingly permit willful violations. The language should be clarified in this respect. In addition, the proposed provision is technically deficient in failing to specify whether the amount of the foreign transaction or the amount in the foreign account constitutes the ceiling. The following suggested changes will cure these problems:

a. Page 4, line 6: Insert after "(4)" "a domestic financial institution knowingly permitting a willful

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violation of, or any person (other than a domestic financial institution)".

b. Page 4, line 6: Delete "A person".

c. Page 4, line 10: After "violation" insert ", whichever is less".

5. There is a typographical error on page 4, line 19. This can be cured by inserting the word "or" after "military".

Comments on S. 2306

1. The amendment to 31 U.S.C. § 5313 made by section 1 of the bill appears to be designed to overcome several recent court decisions which have permitted "smurfs" and others seeking to launder illegally derived funds to escape liability under title 31 of the United States Code. I do not dispute the desirability of an appropriately drawn amendment for this purpose. As drafted, however, the bill contains inadequate safeguards to assure that it is targeted on the true wrongdoer. To correct these deficiencies, I suggest the following revisions:

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a. Page 1, line 7: After "shall" insert "knowingly [and intentionally] for the purpose of evading the reportir requirements of this subsection with respect to a transaction involving funds which he knows to be derived from activities in violation of the laws of the United States or any political subdivision thereof".

b. Page 2, lines 1-2: Delete everything following "transaction" through "subsection" and add the following new sentence following the period: "The immediately preceding sentence shall not apply to a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or any officer, employee or agent of either such institution."

2. The proposed amendment to the existing forfeiture provision covering international currency shipments raises serious implementation problems (e.g., as a practical matter, how could one identify the currency which has not been identified in a 4790 report?) and would unnecessarily interfere with a broad range of legitimate financial transactions (for example, how could a lawyer give a "clean opinion" as to title upon the transfer of <u>any</u> property?). Indeed, although the next amendment made by the bill would create a "bona fide purchaser"

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exception to a separate forfeiture provision, apparently by inadvertence none is included here. These problem as well as certain preexisting problems in the statute, can be remedied by the following changes:

a. Page 2, lines 7-13: Delete everything following "(c)" and substitute the following: "Whenever a person willfully for the purpose of evading the reporting requirement under § 5316 of this title shall have failed to file such report or shall have filed a report containing a material omission or misstatement with respect to any monetary instrument being transported which he knows has been derived from activity in violation of the laws of the United States or any political subdivision thereof, such instrument may be seized and forfeited to the United States Government".

3. The bill would add an entirely new forfeiture provision permitting seizures whenever there had been a willful failure to file a CTR under section 5313. Many of the same objections noted above are present here as well. While I question the need for this additional forfeiture provision in light of the enhanced civil and criminal penalties that are already available, I suggest at least the following minimal changes if this provision is not deleted:

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a. Page 2, line 16 through page 3, line 8: Delete all material and substitute the following:

> "Whenever a person (excluding a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or any officer, employee or agent of either such institution) willfully violates section 5313(a) of this chapter with respect to coin or currency which he knows to be derived from activities in violation of the laws of the United States or any political subdivision thereof, such coin or currency may be seized from such person, or from any other person acting as agent with respect to, or custodian of, such funds on behalf of such person, and forfeited to the United States Government."

4. Apparently for the purpose of enforcement against money launderers as opposed to banks and their personnel, the bill would next add a new civil penalty applicable to persons willfully violating § 5313(a). Although federally regulated institutions would be excepted, their employees would not be, even though such employees are subject to civil penalties under § 5321 and § 5322. Moreover, this section fails to discriminate between failures to report transactions involving illegally derived funds and those involving monies derived from entirely legitimate activity. The following changes are recommended:

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a. Page 3, line 17: Insert after "Commission" the following: "or any officer, employee or agent of either such institution".

b. Page 3, line 18: Insert immediately before the period the following: "with respect to a transaction involving funds which he knows to be derived from activities in violation of the laws of the United States or any political subdivision thereof".

5. The remaining amendments -- to title 26 of the United States Code -- generally include the enforcement of title 31 among the permissible uses of the enforcement authorities provided to the Internal Revenue Service in the sections amended. These amendments appear to be redundant with provisions that are already in title 31 or that would be added to title 31 by other parts of the bill and therefore may create confusion. For example, it is not apparent why the amendment to § 7302 (which provides authority for search warrants, seizure and forfeiture) is necessary in light of 31 U.S.C. § 5317, which provides similar authority that can be delegated by the Secretary of the Treasury to the Internal Revenue Service. Similarly, it is unclear why the amendment to 26 U.S.C. § 7321 is necessary given the new forfeiture provisions described above. Comparable issues exist with respect to the remaining amendments to title 26.

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